

# TITLE 11

## PROBATE LAW AND PROCEDURE—1965 ACT

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### Chapter 11.02 GENERAL PROVISIONS

#### Sections

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**11.02.005 Definitions and use of terms.** When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of his issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor, all lawfully adopted children, and illegitimates as specified in RCW 11.04.081.

(5) "Degree of kinship" shall mean the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on his death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Wills" includes all codicils.

(9) "Codicil" shall mean an instrument executed in the manner provided by this title for wills, which refers to an existing will for the purpose of altering or changing the same, and which need not be attached thereto.

(10) "Guardian" means a personal representative of the estate of an incompetent person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) Words that import the singular number only, may also be applied to the plural of persons and things.

(15) Words importing the masculine gender only may be extended to females also. [1965 c 145 § 11.02.005.

Former RCW sections: Subd. (3), RCW 11.04.110; subd. (4), RCW 11.04.010; subd. (5), RCW 11.04.100; subd. (6), RCW 11.04.280; subd. (7), RCW 11.04.010; subd. (8) and (9), RCW 11.12.240; subd. (14) and (15), RCW 11.02.040.]

*Effect of decree of adoption: RCW 26.32.140.*

*Kindred of the half blood: RCW 11.04.035.*

**11.02.010 Jurisdiction in probate matters—Powers of courts.** The superior courts in the exercise of their jurisdiction of matters of probate shall have power to probate or refuse to probate wills, appoint personal representatives of deceased or incompetent persons and administer and settle all such estates, award processes and cause to come before them all persons whom they may deem it necessary to examine, and order and cause to be issued all such writs as may be proper or necessary, and do all things proper or incident to the exercise of such jurisdiction. [1965 c 145 § 11.02.010. Prior: 1917 c 156 § 1; RRS § 1371; prior: 1891 c 155 § 1; Code 1881 § 1299; 1873 p 253 § 3; 1863 p 199 § 3; 1860 p 167 § 3; 1854 p 309 § 3. Formerly RCW 11.16.010.]

*"Incompetent" person defined; includes minors: RCW 11.88.010.*

*"Personal representative" defined: RCW 11.02.005(1).*

**11.02.020 Powers of courts when law inapplicable, insufficient, or doubtful.** It is the intention of this title that the courts mentioned shall have full and ample power and authority to administer and settle all estates of decedents and incompetent persons in this title mentioned. If the provisions of this title with reference to the administration and settlement of such estates should in any cases and under any circumstances be inapplicable or insufficient or doubtful, the court shall nevertheless have full power and authority to proceed with such administration and settlement in any manner and way which to the court seems right and proper, all to the end that such estates may be by the court administered upon and settled. [1965 c 145 § 11.02.020. Prior: 1917 c 156 § 219; RRS § 1589. Formerly RCW 11.16.020.]

**11.02.030 Exercise of powers—Orders, writs, process, etc.** In exercising any of the jurisdiction or powers by this title given or intended to be given, the court is authorized to make, issue and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes not inconsistent with the provisions of this title, which may be considered proper or necessary in the exercise of such jurisdiction. [1965 c 145 § 11.02.030. Prior: 1917 c 156 § 220; RRS § 1590. Formerly RCW 11.16.030.]

**11.02.050 Uniform declaratory judgments act, proceedings under.** See RCW 7.24.040.

**11.02.060 Power of clerk to fix dates of hearings.** The clerk of each of the superior courts is authorized to fix the time of hearing of all applications, petitions and reports in probate and guardianship proceedings, except the time for hearings upon show cause orders and citations. The authority herein granted is in addition to the

authority vested in the superior courts and superior court commissioners. [1965 c 145 § 11.02.060. Prior: 1947 c 54 § 1; Rem. Supp. 1947 § 1590-a. Formerly RCW 11.16.110.]

**11.02.070 Community property—Disposition—Probate administration of.** Upon the death of a decedent, a one-half share of the community property shall be confirmed to the surviving spouse, and the other one-half share shall be subject to testamentary disposition by the decedent, or shall descend as provided in chapter 11.04 RCW. The whole of the community property shall be subject to probate administration for all purposes of this title, including the payment of obligations and debts of the community, the award in lieu of homestead, the allowance for family support, and any other matter for which the community property would be responsible or liable if the decedent were living. [1967 c 168 § 1.]

**Effective date—1967 c 168:** "The provisions of this act shall take effect on July 1, 1967." [1967 c 168 §§ 16, 19.] This applies to RCW 11.02.070, 11.04.015, 11.04.035, 11.16.050, 11.20.040, 11.20.050, 11.24.010, 11.40.010, 11.44.015, 11.44.070, 11.44.080, 11.52.010, 11.52.020, 11.52.050, 11.56.110 and 11.80.020.

*Descent and distribution of community property:* RCW 11.04.015(1).

**11.02.080 Application and construction of act as to wills, proceedings, guardians, accrued rights and pre-executed instruments—Severability—Effective date—1974 1st ex.s. c 117.** On and after October 1, 1974:

(1) The provisions of \*this 1974 amendatory act shall apply to any wills of decedents dying thereafter;

(2) The provisions of \*this 1974 amendatory act shall apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of \*this 1974 amendatory act;

(3) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on October 1, 1974, continues to hold the appointment, has the powers conferred by \*this 1974 amendatory act and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) An act done before October 1, 1974 in any proceeding and any accrued right is not impaired by \*this 1974 amendatory act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before October 1, 1974, the provisions shall remain in force with respect to that right;

(5) Any rule of construction or presumption provided in \*this 1974 amendatory act applies to instruments executed before October 1, 1974 unless there is a clear indication of a contrary intent. [1974 1st ex.s. c 117 § 1.]

**\*Reviser's note:** "this 1974 amendatory act" [1974 1st ex.s. c 117] consists of RCW 11.02.080, 11.02.090, 11.28.131, 11.28.185, 11.28.330,

11.28.340, 11.44.066, 11.62.010, 11.62.020, 11.68.050, 11.68.060, 11.68.070, 11.68.080, 11.68.090, 11.68.100, 11.68.110, 11.68.120, 11.94.010, 11.94.020 and amendments to RCW 11.04.015, 11.12.120, 11.20.020, 11.28.010, 11.28.070, 11.28.110, 11.28.237, 11.28.280, 11.40.010, 11.40.020, 11.40.030, 11.40.040, 11.40.060, 11.40.100, 11.40.110, 11.44.025, 11.44.070, 11.52.010, 11.52.012, 11.52.020, 11.52.022, 11.68.010, 11.68.020, 11.68.030, 11.68.040, 11.76.080, 11.76.090, 11.76.095, 30.04.260, 30.20.020, 32.12.020, 33.20.080 and 49.48.120 and the repeal of RCW 11.28.130, 11.28.180, 11.28.200, 11.40.050, 11.44.055, 11.44.065 and 11.44.080.

**Legislative directive—Part headings not part of law:** "(1) Sections 4 and 5 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(2) Sections 52 and 53 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(3) Part headings employed in this 1974 amendatory act do not constitute any part of the law and shall not be codified by the code reviser and shall not become a part of the Revised Code of Washington." [1974 1st ex.s. c 117 § 2.]

**Reviser's note:** (1) "Sections 4 and 5 of this 1974 amendatory act" are codified as RCW 11.62.010 and 11.62.020.

(2) "Sections 52 and 53 of this 1974 amendatory act" are codified as RCW 11.94.010 and 11.94.020.

**Severability—1974 1st ex.s. c 117:** "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 1st ex.s. c 117 § 3.]

**Effective date—1974 1st ex.s. c 117:** "This 1974 amendatory act shall take effect October 1, 1974." [1974 1st ex.s. c 117 § 56.]

**11.02.090 Certain provisions of written instruments deemed nontestamentary—Creditors rights—Safety deposit repository leases.** (1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, joint tenancy, community property agreement, trust agreement, conveyance, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this title does not invalidate the instrument or any provision:

(a) that money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(b) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

(c) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) Nothing in this section limits the rights of creditors under other laws of this state.

(3) Any provision in a lease of a safety deposit repository to the effect that two or more persons shall have access to the repository, or that purports to create a joint tenancy in the repository or in the contents of the repository, or that purports to vest ownership of the contents of the repository in the surviving lessee, is ineffective to create joint ownership of the contents of the repository or to transfer ownership at death of one of the lessees to the survivor. Ownership of the contents of

the repository and devolution of title to those contents is determined according to rules of law without regard to the lease provisions. [1974 1st ex.s. c 117 § 54.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

### Chapter 11.04 DESCENT AND DISTRIBUTION

#### Sections

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| 11.04.290 | Vesting of title.  |

*Inheritance and gift taxes: Title 83 RCW.*

*Inheritance rights of slayers: Chapter 11.84 RCW.*

**11.04.015 Descent and distribution of real and personal estate.** The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and RCW 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse. The surviving spouse shall receive the following share:

(a) All of the decedent's share of the net community estate; and

(b) One-half of the net separate estate if the intestate is survived by issue; or

(c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or

(d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse. The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents

who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation. [1974 1st ex.s. c 117 § 6; 1967 c 168 § 2; 1965 ex.s. c 55 § 1; 1965 c 145 § 11.04.015. Formerly RCW 11.04.020, 11.04.030, 11.04.050.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

*Appropriation to pay debts and expenses: RCW 11.56.150.*

*Community property: Chapter 26.16 RCW.*

*Community property, disposition: RCW 11.02.070.*

*Escheats: Chapter 11.08 RCW.*

*"Net estate" defined: RCW 11.02.005(2).*

*Payment of claims where estate insufficient: RCW 11.76.150.*

*Priority of sale, etc., as between realty and personalty: RCW 11.56.015.*

**11.04.035 Kindred of the half blood.** Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood, unless the inheritance comes to the intestate by descent, devise, or gift from one of his ancestors, or kindred of such ancestor's blood, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance: *Provided, however,* That the words "kindred of such ancestor's blood" and "blood of such ancestors" shall be construed to include any child lawfully adopted by one who is in fact of the blood of such ancestors. [1967 c 168 § 3; 1965 c 145 § 11.04.035. Former RCW section: RCW 11.04.100, part.]

*"Degree of kinship" defined: RCW 11.02.005(5).*

**11.04.041 Advancements.** If a person dies intestate as to all his estate, property which he gave in his lifetime as an advancement to any person who, if the intestate had died at the time of making the advancement, would be entitled to inherit a part of his estate, shall be counted toward the advancee's intestate share, and to the extent that it does not exceed such intestate share shall be taken into account in computing the estate to be distributed. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless shown to be an advancement. The advancement shall be considered as of its value at the time when the advancee came into possession or enjoyment or at the time of the death of the intestate, whichever first occurs. If the advancee dies before the



intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled had he survived the intestate, then the heir shall only be charged with such proportion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement. [1965 c 145 § 11.04.041. Former RCW sections: RCW 11.04.040, 11.04.120, 11.04.130, 11.04.140, 11.04.150, 11.04.160 and 11.04.170.]

**11.04.060 Tenancy in dower and by curtesy abolished.** The provisions of RCW 11.04.015, as to the inheritance of the husband and wife from each other take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished. [1965 c 145 § 11.04.060. Prior: Code 1881 § 3304; 1875 p 55 § 3; RRS § 1343.]

**11.04.071 Survivorship as incident of tenancy by the entirety abolished.** The right of survivorship as an incident of tenancy by the entirety is abolished. [1965 c 145 § 11.04.071.]

*Joint tenancy: Chapter 64.28 RCW.*

*Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).*

**11.04.081 Inheritance by and from illegitimate child.** For the purpose of inheritance to, through and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, in all degrees, and they may inherit from him. Such child shall also be treated the same as if he were a legitimate child of his mother for the purpose of determining homestead rights, the distribution of exempt property and the making of family allowances. When the parents of an illegitimate child shall marry subsequent to his birth, or the father shall acknowledge said child in writing, such child shall be deemed to have been made the legitimate child of both of the parents for purposes of intestate succession. [1965 c 145 § 11.04.081. Former RCW sections: RCW 11.04.080 and 11.04.090.]

*"Issue" includes illegitimates: RCW 11.02.005(4).*

**11.04.085 Inheritance by adopted child.** A lawfully adopted child shall not be considered an "heir" of his natural parents for purposes of this title. [1965 c 145 § 11.04.085.]

*Effect of decree of adoption: RCW 26.32.140.*

*"Issue" includes lawfully adopted children: RCW 11.02.005(4).*

**11.04.095 Inheritance from stepparent avoids escheat.** If a person die leaving a surviving spouse and issue by a former spouse and leaving a will whereby all or substantially all of the deceased's property passes to the surviving spouse or having before death conveyed all or substantially all his or her property to the surviving spouse, and afterwards the latter dies without heirs and

without disposing of his or her property by will so that except for this section the same would all escheat, the issue of the spouse first deceased who survive the spouse last deceased shall take and inherit from the spouse last deceased the property so acquired by will or conveyance or the equivalent thereof in money or other property; if such issue are all in the same degree of kinship to the spouse first deceased they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such spouse first deceased. [1965 c 145 § 11.04.095. Prior: 1919 c 197 § 1; RCW 11.08.010; RRS § 1356-1.]

**11.04.230 United States savings bond—Effect of death of co-owner.** If either co-owner of United States savings bonds registered in two names as co-owners (in the alternative) dies without having presented and surrendered the bond for payment to a federal reserve bank or the treasury department, the surviving co-owner will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.230. Prior: 1943 c 14 § 1; Rem. Supp. 1943 § 11548-60.]

**11.04.240 United States savings bond—Effect of beneficiary's survival of registered owner.** If the registered owner of United States savings bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a federal reserve bank or the treasury department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.240. Prior: 1943 c 14 § 2; Rem. Supp. 1943 § 11548-61.]

**11.04.250 When real estate vests—Rights of heirs.** When a person dies seized of lands, tenements or hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his title shall vest immediately in his heirs or devisees, subject to his debts, family allowance, expenses of administration and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent: *Provided*, That no person shall be deemed a devisee until the will has been probated. The title and right to possession of such lands, tenements, or hereditaments so vested in such heirs or devisees, together with the rents, issues and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the personal representative when appointed, and persons lawfully claiming under such personal representative; and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements, or hereditaments and the rents, issues and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the personal representative

and those lawfully claiming under such personal representative. [1965 c 145 § 11.04.250. Prior: 1895 c 105 § 1; RRS § 1366.]

*Right to possession and management of estate: RCW 11.48.020.*

**11.04.270 Limitation of liability for debts.** The estate of a deceased person shall not be liable for his debts unless letters testamentary or of administration be granted within six years from the date of the death of such decedent: *Provided, however,* That this section shall not affect liens upon specific property, existing at the date of the death of such decedent. [1965 c 145 § 11.04.270. Prior: 1929 c 218 § 1; 1895 c 105 § 3; RRS § 1368.]

*Limitation of actions, tolling of statute: RCW 4.16.200.*

**11.04.290 Vesting of title.** RCW 11.04.250 through 11.04.290 shall apply to community real property and also to separate estate; and upon the death of either husband or wife, title of all community real property shall vest immediately in the person or persons to whom the same shall go, pass, descend or be devised, as provided in RCW 11.04.015, subject to all the charges mentioned in RCW 11.04.250. [1965 c 145 § 11.04.290. Prior: 1895 c 105 § 5; RRS § 1370.]

### Chapter 11.05

#### UNIFORM SIMULTANEOUS DEATH ACT

##### Sections

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| 11.05.030 | Joint tenants—Simultaneous death.   |
| 11.05.040 | Distribution of insurance policy when insured and beneficiary die simultaneously. |
| 11.05.050 | Scope of chapter limited.   |
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**11.05.010 Devolution of property in case of simultaneous death of owners.** Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter. [1965 c 145 § 11.05.010. Prior: 1943 c 113 § 1; Rem. Supp. 1943 § 1370-1. Formerly RCW 11.04.180.]

**11.05.020 Procedure when beneficiaries die simultaneously.** Where two or more beneficiaries are designated to take successively or alternately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternate beneficiaries and the portion allocated to each beneficiary shall be distributed as if he had survived all the other beneficiaries. [1965 c 145 § 11.05.020. Prior: 1943 c 113 § 2; Rem. Supp. 1943 § 1370-2. Formerly RCW 11.04.190.]

**11.05.030 Joint tenants—Simultaneous death.** Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived, and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants. [1965 c 145 § 11.05.030. Prior: 1943 c 113 § 3; Rem. Supp. 1943 § 1370-3. Formerly RCW 11.04.200.]

*Joint tenancy: Chapter 64.28 RCW.*

**11.05.040 Distribution of insurance policy when insured and beneficiary die simultaneously.** Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. [1965 c 145 § 11.05.040. Prior: 1943 c 113 § 4; Rem. Supp. 1943 § 1370-4. Formerly RCW 11.04.210.]

**Reviser's note:** The subject matter of this section and RCW 11.05.050 relating to insurance also appears in RCW 48.18.390.

**11.05.050 Scope of chapter limited.** This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter. [1965 c 145 § 11.05.050. Prior: 1943 c 113 § 6; Rem. Supp. 1943 § 1370-6. Formerly RCW 11.04.220.]

**Reviser's note:** See note following RCW 11.05.040.

**11.05.900 Application of chapter to prior deaths.** This chapter shall not apply to the distribution of the property of a person who has died before it takes effect. [1965 c 145 § 11.05.900. Prior: 1943 c 113 § 5; Rem. Supp. 1943 § 1370-5.]

**11.05.910 Construction of chapter.** This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it. [1965 c 145 § 11.05.910. Prior: 1943 c 113 § 7; Rem. Supp. 1943 § 1370-7.]

### Chapter 11.08 ESCHEATS

##### Sections

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| 11.08.005 | Tax commission—Defined.  |
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*Banks, disposition of unclaimed personalty: RCW 30.44.150, 30.44.180-30.44.230.*

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*State land acquired by escheat, management: RCW 79.01.612.*

*Unclaimed estate, disposition: RCW 11.76.220.*

*Uniform disposition of unclaimed property act: Chapter 63.28 RCW.*

**11.08.005 Tax commission—Defined.** The term "tax commission" as used in this chapter shall be held and construed to mean the department of revenue of the state of Washington. [1967 ex.s. c 26 § 19.]

**Effective date—1967 ex.s. c 26:** The effective date of this section is July 1, 1967, see note following RCW 82.01.050.

**Savings—1967 ex.s. c 26:** See note following RCW 82.01.050.

**11.08.101 Property of deceased inmates of state institutions—Disposition after two years.** Where, upon the expiration of two years after the death of any inmate of any state institution, there remains in the custody of the superintendent of such institution, money or property belonging to said deceased inmate, the superintendent shall forward such money to the state treasurer for deposit in the general fund of the state, and shall report such transfer and any remaining property to the department of institutions, which department shall cause the sale of such property and proceeds thereof shall be forwarded to the state treasurer for deposit in the general fund. [1965 c 145 § 11.08.101. Prior: 1951 c 138 § 1; prior: 1923 c 113 § 1; RRS § 1363-1.]

*State institutions: Title 72 RCW.*

**11.08.111 Property of deceased inmates of state institutions—Disposition within two years.** Prior to the expiration of the two-year period provided for in RCW 11.08.101, the superintendent may transfer such money or property in his possession, upon request and satisfactory proof submitted to him, to the following designated persons:

(1) To the personal representative of the estate of such deceased inmate; or

(2) To the next of kin of the decedent, where such money and property does not exceed the value of one thousand dollars, and the person or persons requesting same shall have furnished an affidavit as to his or her being next of kin; or

(3) In the case of money, to the person who may have deposited such money with the superintendent for the use of the decedent, where the sum involved does not exceed one thousand dollars; or

(4) To the department of social and health services, when there are moneys due and owing from such deceased person's estate for the cost of his care and maintenance at a state institution: *Provided*, That transfer of such money or property may be made to the person first qualifying under this section and such transfer shall exonerate the superintendent from further responsibility relative to such money or property: *And provided further*, That upon satisfactory showing the funeral expenses of such decedent are unpaid, the superintendent may pay up to one thousand dollars from said deceased inmate's funds on said obligation. [1973 1st ex.s. c 76 § 1; 1965 c 145 § 11.08.111. Prior: 1959 c 240 § 1; 1951 c 138 § 2.]

**11.08.120 Property of deceased inmates of state institutions—Sale—Disposition of proceeds.** The property, other than money, of such deceased inmate remaining in the custody of a superintendent of a state institution after the expiration of the above two-year period may be forwarded to the department of institutions at its request and may be appraised and sold at public auction to the highest bidder in the manner and form as provided for public sales of personal property, and all moneys realized upon such sale, after deducting the expenses thereof, shall be paid into the general fund of the state treasury. [1965 c 145 § 11.08.120. Prior: 1951 c 138 § 3; prior: 1923 c 113 § 2; RRS § 1363-2.]

**11.08.140 Escheat for want of heirs.** Whenever any person dies, whether a resident of this state or not, leaving property subject to the jurisdiction of this state and without being survived by any person entitled to the same under the laws of this state, such property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.280. [1965 c 145 § 11.08.140. Prior: 1955 c 254 § 2.]

**11.08.150 Title to property vests in state at death of owner.** Title to escheat property, which shall include any intangible personalty, shall vest in the state at the death of the owner thereof. [1965 c 145 § 11.08.150. Prior: 1955 c 254 § 3.]

**11.08.160 Jurisdiction, duties, of tax commission.** The tax commission of this state shall have supervision of and jurisdiction over escheat property and may institute and prosecute any proceedings deemed necessary or proper in the handling of such property, and it shall be the duty of the tax commission to protect and conserve escheat property for the benefit of the permanent common school fund of the state until such property or the proceeds thereof have been forwarded to the state

treasurer or the state land commissioner as hereinafter provided. [1965 c 145 § 11.08.160. Prior: 1955 c 254 § 4.]

**11.08.170 Probate of escheat property—Notice to tax commission.** Escheat property may be probated under the provisions of the probate laws of this state. Whenever such probate proceedings are instituted, whether by special administration or otherwise, the petitioner shall promptly notify the tax commission in writing thereof on forms furnished by the tax commission to the county clerks. Thereafter, the tax commission shall be served with written notice at least twenty days prior to any hearing on proceedings involving the valuation or sale of property, on any petition for the allowance of fees, and on all interim reports, final accounts or petitions for the determination of heirship. Like notice shall be given of the presentation of any claims to the court for allowance. Failure to furnish such notice shall be deemed jurisdictional and any order of the court entered without such notice shall be void: *Provided*, That the tax commission may waive the provisions of this section in its discretion. [1965 c 145 § 11.08.170. Prior: 1955 c 254 § 5.]

**11.08.180 Tax commission to be furnished copies of documents and pleadings.** The tax commission may demand copies of any papers, documents or pleadings involving the escheat property or the probate thereof deemed by it to be necessary for the enforcement of RCW 11.08.140 through 11.08.280 and it shall be the duty of the administrator or his attorney to furnish such copies to the commission. [1965 c 145 § 11.08.180. Prior: 1955 c 254 § 6.]

**11.08.185 Escheat property—Records of department of revenue—Public record information.** All records of the department of revenue relating to escheated property or property about to escheat shall be a public record and shall be made available by the department of revenue for public inspection. Without limitation, the records to be made public shall include all available information regarding possible heirs, descriptions and amounts of property escheated or about to escheat, and any information which might serve to identify the proper heirs. [1973 c 25 § 1.]

**11.08.200 Liability for use of escheated property.** If any person shall take possession of escheat property without proper authorization to do so, and shall have the use thereof for a period exceeding sixty days, he shall be liable to the state for the reasonable value of such use, payment of which may be enforced by the tax commission or by the administrator of the estate. [1965 c 145 § 11.08.200. Prior: 1955 c 254 § 8.]

**11.08.205 Lease, sublease or rental of escheated real property—Authorized—Expenses—Distribution of proceeds.** (1) The department of natural resources shall have the authority to lease real property from the administrator of an estate being probated under the escheat provisions, RCW 11.08.140 to 11.08.280.

(2) The department of natural resources shall have the authority to sublease or rent the real property, it has leased under subsection (1) of this section, during the period that the real property is under the authority of the court appointed administrator.

(3) Any moneys gained by the department of natural resources from leases or rentals shall be credited to an escheat reserve account bearing the name of the estate.

(4) The department of natural resources shall have the authority to expend moneys to preserve and maintain the real property during the probate period.

(5) Any expenses by the department of natural resources in preserving or maintaining the real property may be paid as follows:

(a) First, the expenses shall be charged to the escheat reserve account bearing the name of the estate; and

(b) Second, if the expenses exceed the escheat reserve account, then the expenses shall be paid as follows:

(i) If the land is distributed to the state by the administrator, the expenses shall be paid out of the sale price of the land as later sold by the department of natural resources, or shall be paid out of the general fund if the land is held for use by the state; or

(ii) If the land is distributed to the heirs by the administrator, the expenses shall be borne by the estate.

(6) Upon the final distribution of the real property, the escheat reserve account shall be closed out as follows:

(a) If the real property is distributed to the state, the balance of the account shall be paid into the permanent common school fund of the state; or

(b) If the real property is distributed to the heirs, the balance of the account shall be paid to the estate. [1969 ex.s. c 249 § 1.]

**11.08.210 Allowance of claims, etc.—Sale of property—Decree of distribution.** If at the expiration of four months from the date of the first publication of notice to creditors no heirs have appeared and established their claim to the estate, the court may enter an interim order allowing claims, expenses and partial fees. If at the expiration of sixteen months from the date of issuance of letters testamentary or of administration no heirs have appeared and established their claim to the estate, all personal property not in the form of cash shall be sold under order of the court. Personal property found by the court to be worthless shall be ordered abandoned. Real property shall not be sold for the satisfaction of liens thereon, or for the payment of the debts of decedent or expenses of administration until the proceeds of the personal property are first exhausted. The court shall then enter a decree allowing any additional fees and charges deemed proper and distributing the balance of the cash on hand, together with any real property, to the state. Remittance of cash on hand shall be made to the tax commission which shall make proper records thereof and forthwith forward such funds to the state treasurer for deposit in the permanent common school fund of the state. [1965 c 145 § 11.08.210. Prior: 1955 c 254 § 9.]

**11.08.220 Certified copies of decree—Duties of commissioner of public lands.** The tax commission shall be furnished two certified copies of the decree of the court distributing any real property to the state, one of which shall be forwarded to the state land commissioner who shall thereupon assume supervision of and jurisdiction over such real property and thereafter handle it the same as state common school lands. The administrator shall also file a certified copy of the decree with the auditor of any county in which the escheated real property is situated. [1965 c 145 § 11.08.220. Prior: 1957 c 125 § 1; 1955 c 254 § 10.]

*Management of acquired lands by state land commissioner: RCW 79.01.612.*

**11.08.230 Appearance and claim of heirs—Notices to tax commission.** Upon the appearance of heirs and the establishment of their claim to the satisfaction of the court prior to entry of the decree of distribution to the estate, the provisions of RCW 11.08.140 through 11.08.280 shall not further apply, except for purposes of appeal: *Provided*, That the tax commission shall be promptly given written notice of such appearance by the claimants and furnished copies of all papers or documents on which such claim of heirship is based. Any documents in a foreign language shall be accompanied by translations made by a properly qualified translator, certified by him to be true and correct translations of the original documents. The administrator or his attorney shall also furnish the tax commission with any other available information bearing on the validity of the claim. [1965 c 145 § 11.08.230. Prior: 1955 c 254 § 11.]

**11.08.240 Limitation on filing claim.** Any claimant to escheated funds or real property shall have seven years from the date of issuance of letters testamentary or of administration within which to file his claim. Such claim shall be filed with the court having original jurisdiction of the estate, and a copy thereof served upon the tax commission, together with twenty days notice of the hearing thereon. [1965 c 145 § 11.08.240. Prior: 1955 c 254 § 12.]

**11.08.250 Order of court on establishment of claim.** Upon establishment of the claim to the satisfaction of the court, it shall order payment to the claimant of any escheated funds and delivery of any escheated land, or the proceeds thereof, if sold. [1965 c 145 § 11.08.250. Prior: 1955 c 254 § 13.]

**11.08.260 Payment of escheated funds to claimant.** In the event the order of the court requires the payment of escheated funds or the proceeds of the sale of escheated real property, a certified copy of such order shall be served upon the tax commission which shall thereupon take any steps necessary to effect payment to the claimant out of the general fund of the state. [1965 c 145 § 11.08.260. Prior: 1955 c 254 § 14.]

**11.08.270 Conveyance of escheated property to claimant.** In the event the order of the court requires the delivery of real property to the claimant, a certified

copy of such order shall be served upon the state land commissioner who shall thereupon make proper certification to the office of the governor for issuance of a quit claim deed for the property to the claimant. [1965 c 145 § 11.08.270. Prior: 1955 c 254 § 15.]

**11.08.280 Limitation when claimant is minor or incompetent not under guardianship.** The claims of any persons to escheated funds or real property which are not filed within seven years as specified above are forever barred, excepting as to those persons who are minors or who are legally incompetent and not under guardianship, in which event the claim may be filed within seven years after their disability is removed. [1965 c 145 § 11.08.280. Prior: 1955 c 254 § 16.]

## Chapter 11.12 WILLS

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*Probate records, replacement when lost or destroyed: RCW 5.48.060.*

*Trust company advertising will preparation, penalty: RCW 30.04.260.*

**11.12.010 Who may make a will.** Any person of sound mind who has attained the age of eighteen years may, by last will, devise all his or her estate, both real and personal.

All wills executed subsequent to September 16, 1940, and which meet the requirements of this section are hereby validated and shall have all the force and effect of wills executed subsequent to the taking effect of this section. [1970 ex.s. c 17 § 3; 1965 c 145 § 11.12.010. Prior: 1943 c 193 § 1; 1917 c 156 § 24; Rem. Supp. 1943 § 1394; prior: Code 1881 § 1318; 1863 p 207 § 51; 1860 p 169 § 18.]

**11.12.020 Requisites of wills—Foreign wills.** Every will shall be in writing signed by the testator or by some other person under his direction in his presence, and shall be attested by two or more competent witnesses,

subscribing their names to the will in the presence of the testator by his direction or request: *Provided*, That a last will and testament, executed without the state, in the mode prescribed by law, either of the place where executed or of the testator's domicile shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state. [1965 c 145 § 11.12.020. Prior: 1929 c 21 § 1; 1917 c 156 § 25; RRS § 1395; prior: Code 1881 § 1319; 1863 p 207 §§ 53, 54; 1860 p 170 §§ 20, 21. FORMER PART OF SECTION; re nuncupative wills, now codified as RCW 11.12.025.]

**11.12.025 Nuncupative wills.** Nothing contained in this chapter shall prevent any member of the armed forces of the United States or person employed on a vessel of the United States merchant marine from disposing of his wages or personal property, or prevent any person competent to make a will from disposing of his or her personal property of the value of not to exceed one thousand dollars, by nuncupative will if the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and that such nuncupative will was made at the time of the last sickness of the testator, but no proof of any nuncupative will shall be received unless it be offered within six months after the speaking of the testamentary words, nor unless the words or the substance thereof be first committed to writing, and in all cases a citation be issued to the widow and/or heirs at law of the deceased that they may contest the will, and no real estate shall be devised by a nuncupative will. [1965 c 145 § 11.12.025. Formerly RCW 11.12.020, part.]

**11.12.030 Signature of testator at his direction—Signature by mark.** Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his own name to such will and state that he subscribed the testator's name at his request: *Provided*, That such signing and statement shall not be required if the testator shall evidence the approval of the signature so made at his request by making his mark on the will. [1965 c 145 § 11.12.030. Prior: 1927 c 91 § 1; 1917 c 156 § 27; RRS § 1397; prior: Code 1881 § 1320; 1863 p 207 § 54; 1860 p 170 § 21.]

**11.12.040 Revocation of will, how effected.** A will, or any part thereof, can be revoked

(1) By a written will; or

(2) By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself or by another person in his presence and by his direction. If such act is done by any person other than the testator, the direction of the testator and the facts of such injury or destruction must be proved by two witnesses. [1965 c 145 § 11.12.040. Prior: 1917 c 156 § 28; RRS § 1398; prior: Code 1881 § 1321; 1863 p 207 § 55; 1860 p 170 § 22.]

**11.12.050 Subsequent marriage of testator—Divorce.** If, after making any will, the testator shall marry and the spouse shall be living at the time of the death of the testator, such will shall be deemed revoked as to such spouse, unless provision shall have been made for such survivor by marriage settlement, or unless such survivor be provided for in the will or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation shall be received. A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse. [1965 c 145 § 11.12.050. Prior: 1917 c 156 § 29; RRS § 1399; prior: Code 1881 § 1322; 1863 p 207 § 56; 1860 p 170 § 23.]

**11.12.060 Agreement to convey does not revoke.** A bond, covenant, or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his next of kin, if the same had descended to him. [1965 c 145 § 11.12.060. Prior: 1917 c 156 § 30; RRS § 1400; prior: Code 1881 § 1323; 1863 p 208 § 58; 1860 p 170 § 25.]

**11.12.070 Devise or bequeathal of property subject to encumbrance.** When any real or personal property subject to a mortgage is specifically devised, the devisee shall take such property so devised subject to such mortgage unless the will provides that such mortgage be otherwise paid. The term "mortgage" as used in this section shall not include a pledge of personal property.

A charge or encumbrance upon any real or personal estate for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or encumbrance. [1965 c 145 § 11.12.070. Prior: 1955 c 205 § 2; 1917 c 156 § 31; RRS § 1401; prior: Code 1881 § 1324; 1860 p 170 § 26.]

**11.12.080 No revival of will by revocation of later one.** If, after making any will, the testator shall duly make and execute a second will, the destruction, cancellation, or revocation of such second will shall not revive the first will. [1965 c 145 § 11.12.080. Prior: 1917 c 156 § 35; RRS § 1405; prior: Code 1881 § 1328; 1863 p 208 § 63; 1860 p 171 § 30.]

**11.12.090 Intestacy as to pretermitted children.** If any person make his last will and die leaving a child or children or descendants of such child or children not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, as to such child or children not named or provided for, shall be deemed to die intestate, and such child or children or their descendants shall be

entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part. [1965 c 145 § 11.12.090. Prior: 1917 c 156 § 32; RRS § 1402; prior: Code 1881 § 1325; 1863 p 208 § 60; 1860 p 170 § 27.]

**11.12.110 Death of devisee or legatee before testator.** When any estate shall be devised or bequeathed to any child, grandchild, or other relative of the testator, and such devisee or legatee shall die before the testator, having lineal descendants who survive the testator, such descendants shall take the estate, real and personal, as such devisee or legatee would have done in the case he had survived the testator; if such descendants are all in the same degree of kinship to the predeceased devisee or legatee they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such predeceased devisee or legatee. A spouse is not a relative under the provisions of this section. [1965 c 145 § 11.12.110. Prior: 1947 c 44 § 1; 1917 c 156 § 34; Rem. Supp. 1947 § 1404; prior: Code 1881 § 1327; 1863 p 208 § 62; 1860 p 171 § 29.]

**11.12.120 Lapsed legacy or devise—Procedure and proof.** Whenever any person having died leaving a will which has been admitted to probate or established by an adjudication of testacy, shall by said will have given, devised or bequeathed unto any person, a legacy or a devise upon the condition that said person survive him, and not otherwise, such legacy or devise shall lapse and fall into the residue of said estate to be distributed according to the residuary clause, if there be one, of said will, and if there be none then according to the laws of descent, unless said legatee or devisee, as the case may be, or his heirs, personal representative, or someone in behalf of such legatee or devisee, shall appear before the court which is administering said estate within three years from and after the date the said will was admitted to probate or established by an adjudication of testacy, and prove to the satisfaction of the court that the said legatee or devisee, as the case may be, did in fact survive the testator. [1974 1st ex.s. c 117 § 51; 1965 c 145 § 11.12.120. Prior: 1937 c 151 § 1; RRS § 1404-1.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.12.130 Procedure where legatee or devisee is an absentee.** If it shall be made to appear to the satisfaction of said court within the time fixed by RCW 11.12.120 that such legatee or devisee, as the case may be, did in fact survive the testator, but that such legatee, or devisee, is an absentee within the meaning of chapter 11.80 RCW, then and in that event the court shall by appropriate order direct the said legacy or devise to be distributed to a trustee appointed and qualified as provided for in said chapter 11.80 RCW. [1965 c 145 § 11.12.130. Prior: 1937 c 151 § 2; RRS § 1404-2.]

**11.12.140 Order of court declaring lapse.** The personal representative, residuary legatee, or any heir at law of any such estate, may by sworn petition call the attention of the court to the fact that the periods of time set forth in RCW 11.12.120 have elapsed, and that such legatee or devisee, his heirs, personal representative, or anyone in his behalf, has not appeared and proved to the satisfaction of the court that such legatee or devisee survived the testator, and if it appear from the records of the proceedings in said estate that the allegations of the petition are true, it shall be the duty of the court to enter an appropriate order declaring such legacy or devise to have lapsed, and directing its disposition as provided for in RCW 11.12.120. [1965 c 145 § 11.12.140. Prior: 1937 c 151 § 3; RRS § 1404-3.]

**11.12.150 Petition and notice where legatee or devisee unknown.** Every personal representative of such an estate shall, within two years after the said will has been admitted to probate, file in said probate proceedings a sworn petition which shall set out in detail the name and last known address of any such legatee or devisee, the circumstances of his departure from that address, if known; his occupation or business, if known; the fact that the personal representative has been unable to locate him or to ascertain whether or not he survived the testator; and all other facts within the knowledge of the personal representative, which may aid the court in determining the best and most advantageous method to employ in attempting to locate said legatee or devisee. Upon such a petition being filed it shall be the duty of the court, and the court shall have the power, to call before it the personal representative and such witnesses as may be necessary, and examine them under oath as to the truth of the allegations in said petition. After the hearing the court may direct such notice to be given as it shall think will most likely come to the attention of said legatee or devisee, or persons who might know him. Such notice shall be given for such a length of time and in such places as the court may order, and shall set forth the fact that a legacy or devise, as the case may be, awaits the person therein named, and shall call upon all persons having any knowledge concerning the said person or his whereabouts to notify the court of all the facts within their knowledge concerning said person, within a time therein stated. [1965 c 145 § 11.12.150. Prior: 1937 c 151 § 4; RRS § 1404-4.]

**11.12.160 Witness as devisee or legatee—Effect of, on will.** All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. If such witness, to whom any beneficial devise, legacy or gift may have been made or given, would have been entitled to any share in the testator's estate in case the will is not established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to



him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him. [1965 c 145 § 11.12.160. Prior: 1917 c 156 § 38; RRS § 1408; prior: Code 1881 § 1331; 1863 p 209 § 67; 1860 p 171 § 34.]

**11.12.170 Devise of land, what passes.** Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate. [1965 c 145 § 11.12.170. Prior: 1917 c 156 § 39; RRS § 1409; prior: Code 1881 § 1332; 1863 p 209 § 69; 1860 p 172 § 36.]

**11.12.180 Estates for life—Remainders.** If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and unless the remainder is specially devised, it shall revert to the heirs at law of the testator. [1965 c 145 § 11.12.180. Prior: 1917 c 156 § 40; RRS § 1410; prior: Code 1881 § 1333; 1863 p 210 § 70; 1860 p 172 § 37.]

**11.12.190 Will to operate on after-acquired property.** Any estate, right or interest in property acquired by the testator after the making of his will may pass thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. [1965 c 145 § 11.12.190. Prior: 1917 c 156 § 41; RRS § 1411; prior: Code 1881 § 1334; 1863 p 210 § 71; 1860 p 172 § 38.]

**11.12.200 Contribution among devisees and legatees.** When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken. [1965 c 145 § 11.12.200. Prior: 1917 c 156 § 42; RRS § 1412; prior: Code 1881 § 1335; 1863 p 210 § 72; 1860 p 172 § 39.]

**11.12.210 Enforcement of contribution.** When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made and enforce such order. [1965 c 145 § 11.12.210. Prior: 1917 c 156 § 43; RRS § 1413; prior: Code 1881 § 1336; 1863 p 210 § 73; 1860 p 172 § 40.]

**11.12.220 No interest on devise unless will so provides.** No interest shall be allowed or calculated on any devise contained in any will unless such will expressly provides for such interest. [1965 c 145 § 11.12.220. Prior: 1917 c 156 § 26; RRS § 1396.]

**11.12.230 Intent of testator controlling.** All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them. [1965 c 145 § 11.12.230. Prior: 1917 c 156 § 45; RRS § 1415; prior: Code 1881 § 1338; 1863 p 210 § 75; 1860 p 172 § 42.]

**11.12.250 Devises or bequests to trusts.** A devise or bequest may be made by a will to a trustee or trustees of a trust created by the testator and/or some other person or persons (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) established by written instrument executed before or concurrently with the execution of such will. Such devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will. Unless the will provides otherwise, the property so devised or bequeathed shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given to be administered and disposed of in accordance with the provisions of the instrument establishing such trust, including any amendments thereto, made prior to the death of the testator, regardless of whether made before or after the execution of the will. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest. [1965 c 145 § 11.12.250. Prior: 1959 c 116 § 1.]

*Trusts—Rule against perpetuities: Chapter 11.98 RCW.*

## Chapter 11.16 JURISDICTION—VENUE—NOTICES

### Sections

- 11.16.050 Venue.
- 11.16.060 Property of nonresident in more than one county—Jurisdiction.
- 11.16.070 Proceedings had in county where letters granted.
- 11.16.082 Proof of service.
- 11.16.083 Waiver of notice.
- 11.16.120 Books of record to be kept by county clerk.

*Applications for involuntary hospitalization of mentally ill a probate matter: RCW 71.02.110.*

*Clerk of superior court, fees: RCW 36.18.020.*

*Unknown heirs, pleading, process, service, etc.: RCW 4.28.130-4.28.160: Rules of court: CR 10(a).*

**11.16.050 Venue.** Wills shall be proved and letters testamentary or of administration shall be granted:

(1) In the county of which deceased was a resident at the time of his death.

(2) In the county in which he may have died, or in which any part of his estate may be, he not being a resident of the state.

(3) In the county in which any part of his estate may be, he having died out of the state, and not having been a resident thereof at the time of his death. [1967 c 168 § 4; 1965 c 145 § 11.16.050. Prior: 1917 c 156 § 6; RRS § 1376; prior: Code 1881 § 1340; 1863 p 210 § 76; 1860 p 173 § 43.]

**11.16.060 Property of nonresident in more than one county—Jurisdiction.** When the estate of the deceased is in more than one county, he not having been a resident of the state at the time of his death, the superior court of that county in which the application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate. [1965 c 145 § 11.16.060. Prior: 1917 c 156 § 7; RRS § 1377; prior: Code 1881 § 1341; 1863 p 211 § 77; 1860 p 173 § 44.]

**11.16.070 Proceedings had in county where letters granted.** All orders, settlements, trials and other proceedings, under this title shall be had or made in the county in which letters testamentary or of administration were granted. [1965 c 145 § 11.16.070. Prior: 1917 c 156 § 8; RRS § 1378; prior: 1891 p 381 § 5; Code 1881 § 1314; 1863 p 206 § 47.]

**11.16.082 Proof of service.** Proof of service in all cases requiring notice, whether by publication, mailing or otherwise, shall be filed in the cause. [1965 c 145 § 11.16.082.]

**11.16.083 Waiver of notice.** Any person legally competent who is interested in any hearing in a probate proceeding may in person or by attorney waive in writing notice of such hearing. A guardian of the estate or a guardian ad litem may make such a waiver on behalf of his incompetent, and a trustee may make such a waiver on behalf of the beneficiary of his trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make such waiver of notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof. [1965 c 145 § 11.16.083.]

*Appointment of guardian, waiver of notice of hearing: RCW 11.88.040.*

*Award in lieu of homestead—Notice of hearing: RCW 11.52.014.*

*Borrowing on general credit of estate—Petition—Notice—Hearing: RCW 11.56.280.*

*Citations in contest of will: RCW 11.24.020.*

*Notice of appointment as special representative: RCW 11.28.237.*

*Notice to creditors when personal representative resigns, dies, or is removed: RCW 11.40.150.*

*Notice to tax commission of appointment as personal representative: RCW 82.32.240.*

*Report of personal representative, notice of hearing: RCW 11.76.020, 11.76.040.*

*Request for special notice of proceedings in probate: RCW 11.28.240.*

*Surviving spouse, waiver of notice of hearing on petition for letters: RCW 11.28.130.*

**11.16.120 Books of record to be kept by county clerk.** See RCW 36.23.030.

## Chapter 11.20

### CUSTODY, PROOF AND PROBATE OF WILLS

#### Sections

11.20.010 Duty of custodian of will—Liability.

- 11.20.020 Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses.
- 11.20.021 List of heirs to be filed with clerk.
- 11.20.030 Commission to take testimony of witness.
- 11.20.040 Proof where one or more witnesses are unable or incompetent to testify, or absent from state.
- 11.20.050 Recording of wills.
- 11.20.060 Record of will as evidence.
- 11.20.070 Proof of lost or destroyed will.
- 11.20.080 Restraint of personal representative during pendency of application to prove lost or destroyed will.
- 11.20.090 Admission to probate of foreign will.
- 11.20.100 Laws applicable to foreign wills.

**11.20.010 Duty of custodian of will—Liability.** Any person having the custody or control of any will shall, within thirty days after he shall have received knowledge of the death of the testator, deliver said will to the court having jurisdiction or to the person named in the will as executor, and any executor having in his custody or control any will shall within forty days after he received knowledge of the death of the testator deliver the same to the court having jurisdiction. Any person who shall wilfully violate any of the provisions of this section shall be liable to any party aggrieved for the damages which may be sustained by such violation. [1965 c 145 § 11.20.010. Prior: 1917 c 156 § 9; RRS § 1379; prior: Code 1881 §§ 1342, 1343; 1863 p 212 § 78; 1860 p 174 § 45.]

*Refusal to serve as executor: RCW 11.28.010.*

**11.20.020 Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses.** (1) Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive except in the event of a contest of such will as hereinafter provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court. If the application for probate of a will does not request the appointment of a personal representative and the court enters an adjudication of testacy establishing such will no further administration shall be required except as commenced pursuant to RCW 11.28.340.

(2) In addition to the foregoing procedure for the proof of wills, any or all of the attesting witnesses to a will may, at the request of the testator or, after his decease, at the request of the executor or any person interested under it, make an affidavit before any person authorized to administer oaths, stating such facts as they would be required to testify to in court to prove such will, which affidavit may be written on the will or may be attached to the will or to a photographic copy of the will. The sworn statement of any witness so taken shall be accepted by the court as if it had been taken before the court. [1974 1st ex.s. c 117 § 27; 1969 ex.s. c 126 § 1; 1965 c 145 § 11.20.020. Prior: 1917 c 156 § 10;

RRS § 1380; prior: 1863 p 212 §§ 85, 86; 1860 p 175 §§ 52, 53.]

**Application, construction—Severability—Effective date—1974**  
1st ex.s. c 117: See RCW 11.02.080 and notes following.  
*Will contests: Chapter 11.24 RCW.*

**11.20.021 List of heirs to be filed with clerk.** List of heirs to be filed upon application for probate, see Inheritance and gift taxes: See RCW 83.36.040.

**11.20.030 Commission to take testimony of witness.** If any witness be prevented by sickness from attending at the time any will is produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission annexed to such will, and directed to any judge, justice of the peace, notary public, or other person authorized to administer an oath, empowering him to take and certify the attestation of such witness. [1965 c 145 § 11.20.030. Prior: 1923 c 142 § 1; 1917 c 156 § 11; RRS § 1381; prior: Code 1881 § 1351; 1863 p 212 § 87; 1860 p 175 § 54.]

**11.20.040 Proof where one or more witnesses are unable or incompetent to testify, or absent from state.** The subsequent incompetency from whatever cause of one or more of the subscribing witnesses, or their inability to testify in open court or pursuant to commission, or their absence from the state, shall not prevent the probate of the will. In such cases the court shall admit the will to probate upon satisfactory testimony that the handwriting of the testator and of an incompetent or absent subscribing witness is genuine or the court may consider such other facts and circumstances, if any, as would tend to prove such will. [1967 c 168 § 5; 1965 c 145 § 11.20.040. Prior: 1945 c 39 § 1; 1943 c 219 § 1; 1917 c 156 § 12; Rem. Supp. 1945 § 1382; prior: Code 1881 § 1353; 1863 p 213 §§ 89, 90; 1860 p 175 §§ 56, 57.]

**11.20.050 Recording of wills.** All wills shall be recorded by the clerk after filing, but may be withdrawn on the order of the court. [1967 c 168 § 17; 1965 c 145 § 11.20.050. Prior: 1915 c 156 § 13; RRS § 1383; prior: Code 1881 § 1356; 1863 p 213 § 92; 1860 p 175 § 59.]

*Clerk to keep record of wills: RCW 36.23.030(7).*

**11.20.060 Record of will as evidence.** The record of any will made, probated and recorded as herein provided, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven. [1965 c 145 § 11.20.060. Prior: 1917 c 156 § 14; RRS § 1384; prior: 1891 p 382 § 7; Code 1881 § 1358; 1863 p 213 § 94; 1860 p 175 § 61.]

*Certified copies of recorded instruments as evidence: RCW 5.44.060.*

**11.20.070 Proof of lost or destroyed will.** Whenever any will is lost or destroyed, the court may take proof of the execution and validity of such will and establish

it, notice to all persons interested having been first given. Such proof shall be reduced to writing and signed by the witnesses and filed with the clerk of the court.

No will shall be allowed to be proved as a lost or destroyed will unless it is proved to have been in existence at the time of the death of the testator, or is shown to have been destroyed, canceled or mutilated in whole or in part as a result of actual or constructive fraud or in the course of an attempt to change the will in whole or in part, which attempt has failed, or as the result of a mistake of fact, nor unless its provisions are clearly and distinctly proved by at least two witnesses, and when any such will is so established, the provisions thereof shall be distinctly stated in the judgment establishing it, and such judgment shall be recorded as wills are required to be recorded. Executors of such will or administrators with the will annexed may be appointed by the court in the same manner as is herein provided with reference to original wills presented to the court for probate. [1965 c 145 § 11.20.070. Prior: 1955 c 205 § 1; 1917 c 156 § 20; RRS § 1390; prior: Code 1881 § 1367; 1860 p 177 § 70.]

*Replacement of lost or destroyed probate records: RCW 5.48.060.*

**11.20.080 Restraint of personal representative during pendency of application to prove lost or destroyed will.** If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration shall have been granted on the estate of the testator, or letters testamentary of any previous will of the testator shall have been granted, the court shall have authority to restrain the personal representatives so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will. [1965 c 145 § 11.20.080. Prior: 1917 c 156 § 21; RRS § 1391; prior: Code 1881 § 1369; 1863 p 215 § 105; 1860 p 177 § 72.]

*Replacement of lost or destroyed probate records: RCW 5.48.060.*

**11.20.090 Admission to probate of foreign will.** Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this state on the production of a copy of such will and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probate was made; or if there be no clerk, by the attestation of the judge thereof, and by the seal of such officers, if they have a seal. [1965 c 145 § 11.20.090. Prior: 1917 c 156 § 22; RRS § 1392; prior: Code 1881 § 1370; 1877 p 284 § 1.]

**11.20.100 Laws applicable to foreign wills.** All provisions of law relating to the carrying into effect of domestic wills after probate thereof shall, so far as applicable, apply to foreign wills admitted to probate in this state. [1965 c 145 § 11.20.100. Prior: 1917 c 156 § 23; RRS § 1393; prior: Code 1881 § 1371; 1877 p 284 § 2.]

### Chapter 11.24 WILL CONTESTS

|           |  |
|-----------|--|
| Sections  |  |
| 11.24.010 | Contest of admission or rejection—Limitation of action—Issues. |
| 11.24.020 | Citations on contest.  |
| 11.24.030 | Burden of proof.   |
| 11.24.040 | Revocation of probate.   |
| 11.24.050 | Costs.   |

**11.24.010 Contest of admission or rejection—Limitation of action—Issues.** If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will.

If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding and final. [1971 c 7 § 1; 1967 c 168 § 6; 1965 c 145 § 11.24.010. Prior: 1917 c 156 § 15; RRS § 1385; prior: 1891 p 382 § 8; Code 1881 § 1360; 1863 p 213 § 96; 1860 p 176 § 63.]

**11.24.020 Citations on contest.** Upon the filing of the petition referred to in RCW 11.24.010, a citation shall be issued to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the state, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted. [1965 c 145 § 11.24.020. Prior: 1917 c 156 § 16; RRS § 1386; prior: 1891 p 382 § 9; Code 1881 § 1361; 1863 p 214 § 97; 1860 p 176 § 64.]

**11.24.030 Burden of proof.** In any such contest proceedings the previous order of the court probating, or refusing to probate, such will shall be prima facie evidence of the legality of such will, if probated, or its illegality, if rejected, and the burden of proving the illegality of such will, if probated, or the legality of such will, if rejected by the court, shall rest upon the person contesting such probate or rejection of the will. [1965 c 145 § 11.24.030. Prior: 1917 c 156 § 17; RRS § 1387.]

**11.24.040 Revocation of probate.** If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked, and thereupon and thereafter the powers of the executor or administrator with the will annexed shall cease, but such executor or administrator shall not be liable for

any act done in good faith previous to such annulling or revoking. [1965 c 145 § 11.24.040. Prior: 1917 c 156 § 18; RRS § 1388; prior: Code 1881 § 1364; 1863 p 214 § 100; 1860 p 177 § 67.]

**11.24.050 Costs.** If the probate be revoked or the will annulled, assessment of costs shall be in the discretion of the court. If the will be sustained, the court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney's fees as the court may deem proper. [1965 c 145 § 11.24.050. Prior: 1917 c 156 § 19; RRS § 1389; prior: Code 1881 § 1366; 1860 p 177 § 69.]

**Rules of court:** *SPR 98.12W.*

**Personal representative—Allowance of necessary expenses:** *RCW 11.48.050.*

**Personal representative—Compensation—Attorney's fee:** *RCW 11.48.210.*

### Chapter 11.28 LETTERS TESTAMENTARY AND OF ADMINISTRATION

|           |  |
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| Sections  |  |
| 11.28.010 | Letters to executors—Refusal to serve—Disqualification.  |
| 11.28.020 | Objections to appointment.   |
| 11.28.030 | Community property—Who entitled to letters—Waiver.   |
| 11.28.040 | Procedure during minority or absence of executor.  |
| 11.28.050 | Powers of remaining executors on removal of associate.   |
| 11.28.060 | Administration with will annexed on death of executor.   |
| 11.28.070 | Authority of administrator with will annexed.  |
| 11.28.085 | Records and certification of letters—Record of bonds.  |
| 11.28.090 | Execution and form of letters testamentary.  |
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| 11.28.131 | Hearing on petition—Appointment—Issuance of letters—Notice to surviving spouse.  |
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| 11.28.185 | Bond or other security of personal representative—When not required—Waiver—Corporate trustee—Additional bond—Reduction—Other security. |
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- 11.28.330 Notice of adjudication of testacy or intestacy and heirship—Contents—Service or mailing.
- 11.28.340 Order of adjudication of testacy or intestacy and heirship—Entry—Time limitation—Deemed final decree of distribution, when—Purpose—Finality of adjudications.

*Administration of deceased incompetent's estate: RCW 11.88.150.*

*Letters after final settlement: RCW 11.76.250.*

*Replacement of lost or destroyed probate records: RCW 5.48.060.*

*Trust company may not solicit appointment as personal representative: RCW 30.04.260.*

**11.28.010 Letters to executors—Refusal to serve—Disqualification.** After the entry of an order admitting a will to probate and appointing a personal representative, or personal representatives, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will. [1974 1st ex.s. c 117 § 28; 1965 c 145 § 11.28.010. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.28.020 Objections to appointment.** Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court. [1965 c 145 § 11.28.020. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

**11.28.030 Community property—Who entitled to letters—Waiver.** A surviving spouse shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court find such spouse to be otherwise qualified; but if such surviving spouse do not make application for such appointment within forty days immediately following the death of the deceased spouse, he or she shall be considered as having waived his or her right to administer upon such community property. If any person, other than the surviving spouse, make application for letters testamentary on such property, prior to the expiration of such forty days, then the court, before making any such appointment, shall require notice of such application to be given the said surviving spouse, for such time and in such manner as the court may determine, unless such applicant show to the satisfaction of the court that there is no surviving spouse or that he or she has in writing waived the right to administer upon such community property. [1965 c 145 § 11.28.030. Prior: 1917 c 156 § 49; RRS § 1419.]

**11.28.040 Procedure during minority or absence of executor.** If the executor be a minor or absent from the state, letters of administration with the will annexed shall be granted, during the time of such minority or

absence, to some other person unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor until the disqualification shall be removed, when such minor, having arrived at full age, or such absentee, having returned, shall be admitted as joint executor with the former, provided a nonresident of this state may qualify as provided in RCW 11.36.010. [1965 c 145 § 11.28.040. Prior: 1917 c 156 § 50; RRS § 1420; prior: Code 1881 § 1374; 1863 p 217 § 108; 1860 p 180 § 75.]

**11.28.050 Powers of remaining executors on removal of associate.** When any of the executors named shall not qualify or having qualified shall become disqualified or be removed, the remaining executor or executors shall have the authority to perform every act and discharge every trust required by the will, and their acts shall be effectual for every purpose. [1965 c 145 § 11.28.050. Prior: 1917 c 156 § 54; RRS § 1424; prior: Code 1881 § 1372; 1854 p 268 § 5.]

**11.28.060 Administration with will annexed on death of executor.** No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, on the estate of the first testator left unadministered, shall be issued. [1965 c 145 § 11.28.060. Prior: 1917 c 156 § 53; RRS § 1423; prior: Code 1881 § 1379; 1863 p 218 § 113; 1860 p 180 § 80.]

*Executor of executor may not sue for estate of first testator: RCW 11.48.190.*

**11.28.070 Authority of administrator with will annexed.** Administrators with the will annexed shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose: *Provided*, That they shall not lease, mortgage, pledge, exchange, sell, or convey any real or personal property of the estate except under order of the court and pursuant to procedure under existing laws pertaining to the administration of estates in cases of intestacy, unless the powers expressed in the will are directory and not discretionary, or said administrator with will annexed shall have obtained nonintervention powers as provided in chapter 11.68 RCW. [1974 1st ex.s. c 117 § 25; 1965 c 145 § 11.28.070. Prior: 1955 c 205 § 3; 1917 c 156 § 55; RRS § 1425; prior: Code 1881 § 1381; 1860 p 180 § 82.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.28.085 Records and certification of letters—Record of bonds.** See RCW 36.23.030.

**11.28.090 Execution and form of letters testamentary.** Letters testamentary to be issued to executors under the provisions of this chapter shall be signed by the clerk, and issued under the seal of the court, and may be in the following form:

State of Washington, county of \_\_\_\_\_

In the superior court of the county of \_\_\_\_\_

Whereas, the last will of A B, deceased, was, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_, duly exhibited, proven, and recorded in our said superior court; and whereas, it appears in and by said will that C D is appointed executor thereon, and, whereas, said C D has duly qualified, now, therefore, know all men by these presents, that we do hereby authorize the said C D to execute said will according to law.

Witness my hand and the seal of said court this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_

[1965 c 145 § 11.28.090. Prior: (i) 1917 c 156 § 56; RCW 11.28.080; RRS § 1426; prior: Code 1881 § 1382; 1863 p 218 § 116; 1860 p 181 § 83. (ii) 1917 c 156 § 59; RRS § 1429; prior: Code 1881 § 1386; 1863 p 219 § 120; 1860 p 181 § 87.]

**11.28.100 Form of letters with will annexed.** Letters of administration with the will annexed shall be in substantially the same form as provided for letters testamentary. [1965 c 145 § 11.28.100. Prior: 1917 c 156 § 60; RRS § 1430; prior: Code 1881 § 1387; 1863 p 219 § 121.]

**11.28.110 Application for letters of administration or adjudication of intestacy and heirship.** Application for letters of administration, or, application for an adjudication of intestacy and heirship without the issuance of letters of administration shall be made by petition in writing, signed and verified by the applicant or his attorney, and filed with the court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and state, if known, the names, ages and addresses of the heirs of the deceased and that the deceased died without a will. If the application for an adjudication of intestacy and heirship does not request the appointment of a personal representative and the court enters an adjudication of intestacy no further administration shall be required except as set forth in RCW 11.28.330. [1974 1st ex.s. c 117 § 29; 1965 c 145 § 11.28.110. Prior: 1917 c 156 § 62; RRS § 1432; prior: Code 1881 § 1389; 1863 p 220 § 123; 1860 p 182 § 90.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.28.111 List of heirs to be filed with clerk.** List of heirs to be filed upon filing petition for letters, see Inheritance and gift taxes: See RCW 83.36.040.

**11.28.120 Persons entitled to letters.** Administration of the estate of the person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

- (1) The surviving husband or wife, or such person as he or she may request to have appointed.
- (2) The next of kin in the following order: (a) child or children; (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e) nephews or nieces.
- (3) One or more of the principal creditors.

(4) If the persons so entitled shall fail for more than forty days after the death of the intestate to present a petition for letters of administration, or if it appear to the satisfaction of the court that there are no relatives or next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint any suitable person to administer such estate. [1965 c 145 § 11.28.120. Prior: 1927 c 76 § 1; 1917 c 156 § 61; RRS § 1431; prior: Code 1881 § 1388; 1863 p 219 § 122; 1860 p 181 § 89.]

**11.28.131 Hearing on petition—Appointment—Issuance of letters—Notice to surviving spouse.** When a petition for general letters of administration or for letters of administration with the will annexed shall be filed, the matter may [be] heard forthwith, appointment made and letters of administration issued: *Provided*, That if there be a surviving spouse and a petition is presented by anyone other than the surviving spouse, or any person designated by the surviving spouse to serve as personal representative on his or her behalf, notice to the surviving spouse shall be given of the time and place of such hearing at least ten days before the hearing, unless the surviving spouse shall waive notice of the hearing in writing filed in the cause. [1974 1st ex.s. c 117 § 44.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.28.140 Form of letters of administration.** Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

State of Washington, County of \_\_\_\_\_

Whereas, A.B., late of \_\_\_\_\_ on or about the \_\_\_\_\_ day of \_\_\_\_\_ A.D., \_\_\_\_\_ died intestate, leaving at the time of his death, property in this state subject to administration: Now, therefore, know all men by these presents, that we do hereby appoint \_\_\_\_\_ administrator upon said estate, and whereas said administrator has duly qualified, hereby authorize him to administer the same according to law.

Witness my hand and the seal of said court this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 19\_\_\_

[1965 c 145 § 11.28.140. Prior: 1917 c 156 § 65; RRS § 1435; prior: Code 1881 § 1392; 1863 p 220 § 125; 1860 p 182 § 92.]

**11.28.150 Revocation of letters by discovery of will.** If after letters of administration are granted a will of the deceased be found and probate thereof be granted, the letters shall be revoked and letters testamentary or of administration with the will annexed, shall be granted. [1965 c 145 § 11.28.150. Prior: 1917 c 156 § 51; RRS § 1421; prior: Code 1881 § 1375; 1863 p 218 § 109; 1860 p 180 § 76.]

**11.28.160 Cancellation of letters of administration.** The court appointing any personal representative shall have authority for any cause deemed sufficient, to cancel and annul such letters and appoint other personal representatives in the place of those removed. [1965 c 145 § 11.28.160. Prior: 1917 c 156 § 52; RRS § 1422.]

*Revocation of letters—Causes: RCW 11.28.250.*

**11.28.170 Oath of personal representative.** Before letters testamentary or of administration are issued, each personal representative or an officer of a bank or trust company qualified to act as a personal representative, must take and subscribe an oath, before some person authorized to administer oaths, that the duties of the trust as personal representative will be performed according to law, which oath must be filed in the cause and recorded. [1965 c 145 § 11.28.170. Prior: 1917 c 156 § 66; RRS § 1436; prior: Code 1881 § 1393; 1877 p 211 § 4; 1873 p 329 § 366.]

**11.28.185 Bond or other security of personal representative—When not required—Waiver—Corporate trustee—Additional bond—Reduction—Other security.** When the terms of the decedent's will manifest an intent that the personal representative appointed to administer the estate shall not be required to furnish bond or other security, or when the personal representative is the surviving spouse of the decedent and it appears to the court that the entire estate, after provision for expenses and claims of creditors, will be distributable to such spouse and any minor children born to or adopted by decedent and living with said surviving spouse, then such personal representative shall not be required to give bond or other security as a condition of appointment. In all cases where a bank or trust company authorized to act as personal representative is appointed as personal representative, no bond shall be required. In all other cases, unless waived by the court, the personal representative shall give such bond or other security, in such amount and with such surety or sureties, as the court may direct.

Every person required to furnish bond must, before receiving letters testamentary or of administration, execute a bond to the state of Washington conditioned that the personal representative shall faithfully execute the duty of the trust according to law.

The court may at any time after appointment of the personal representative require said personal representative to give a bond or additional bond, the same to be conditioned and to be approved as provided in this section; or the court may allow a reduction of the bond upon a proper showing.

In lieu of bond, the court may in its discretion, substitute other security or financial arrangements, such as provided under RCW 11.88.105, or as the court may deem adequate to protect the assets of the estate. [1974 1st ex.s. c 117 § 46.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.28.190 Examination of sureties—Additional security—Costs.** Before the judge approves any bond required under this chapter, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the personal representative, requiring his appearance on the return of the citation, and on its return he may examine the sureties and such witnesses as may be produced touching the property of the sureties and its value; and if upon such examination he is satisfied that the bond is insufficient he must require sufficient additional security. If the bond and sureties are found by the court to be sufficient, the costs incident to such hearing shall be taxed against the party instituting such hearing. As a part of such costs the sureties appearing shall be allowed such fees and mileage as witnesses are allowed in civil proceedings: *Provided*, That when the citation herein referred to is issued on the motion of the court, no costs shall be imposed. [1965 c 145 § 11.28.190. Prior: 1917 c 156 § 68; RRS § 1438; prior: Code 1881 § 1400; 1877 p 212 § 4; 1863 p 221 § 129; 1860 p 183 § 96.]

*Fees and allowances of witnesses: Chapter 2.40 RCW, RCW 5.56.010.*

**11.28.210 New or additional bond.** Any person interested may at any time by verified petition to the court, or otherwise, complain of the sufficiency of any bond or sureties thereon, and the court may upon such petition, or upon its own motion, and with or without hearing upon the matter, require the personal representative to give a new, or additional bond, or bonds, and in all such matters the court may act in its discretion and make such orders and citations as to it may seem right and proper in the premises. [1965 c 145 § 11.28.210. Prior: 1917 c 156 § 70; RRS § 1440; prior: 1891 p 383 § 13 1/2; Code 1881 § 1404; 1877 p 212 § 4; 1863 p 221 § 131; 1860 p 183 § 98.]

**11.28.220 Persons disqualified as sureties.** No judge of the superior court, no sheriff, clerk of a court, or deputy of either, and no attorney at law shall be taken as surety on any bond required to be taken in any proceeding in probate. [1965 c 145 § 11.28.220. Prior: 1917 c 156 § 71; RRS § 1441; prior: 1891 p 383 § 14; Code 1881 § 1409; 1863 p 221 § 128; 1860 p 183 § 95.]

**11.28.230 Bond not void for want of form—Successive recoveries.** No bond required under the provisions of this chapter, and intended as such bond, shall be void for want of form, recital or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond the plaintiff may state its



legal effect in the same manner as though it were a perfect bond. The bond shall not be void upon the first recovery, but may be sued and recovered upon, from time to time, by any person aggrieved in his own name, until the whole penalty is exhausted. [1965 c 145 § 11.28.230. Prior: 1917 c 156 § 73; RRS § 1443; prior: Code 1881 §§ 1412, 1397; 1877 p 211 § 4; 1854 p 219 § 489.]

*Bond not to fail for want of form or substance: RCW 19.72.170.*

**11.28.235 Limitation of action against sureties.** All actions against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal. [1965 c 145 § 11.28.235. Prior: 1917 c 156 § 80; RCW 11.28.310; RRS § 1450; prior: 1891 p 385 § 21; Code 1881 § 1431; 1854 p 274 § 42.]

**11.28.237 Notice of appointment as personal representative, pendency of probate.** Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his said appointment, and of the pendency of said probate proceedings, to be served personally or mailed to each heir, legatee and devisee of the estate whose names and addresses are known to him, and proof of such mailing shall be made by affidavit and filed in the cause. [1974 1st ex.s. c 117 § 30; 1969 c 70 § 2; 1965 c 145 § 11.28.237. Prior: 1955 c 205 § 13, part; RCW 11.76.040, part.]

*Rules of court: SPR 98.04W.*

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.28.238 Notice of appointment as personal representative—Notice to tax commission.** Duty of personal representative to notify tax commission of administration; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

**11.28.240 Request for special notice of proceedings in probate.** At any time after the issuance of letters testamentary or of administration upon the estate of any decedent, any person interested in said estate as heir, devisee, distributee, legatee or creditor whose claim has been duly served and filed, or attorney for such heir, devisee, distributee, legatee, or creditor may serve upon the personal representative (or upon the attorney for such personal representative) and file with the clerk of the court wherein the administration of such estate is pending, a written request stating that he desires special notice of any or all of the following named matters, steps or proceedings in the administration of said estate, to wit:

- (1) Filing of petitions for sales, leases, exchanges or mortgages of any property of the estate.
- (2) Petitions for any order of solvency.
- (3) Filing of accounts.
- (4) Filing of petitions for distribution.
- (5) Petitions by the personal representative for family allowances and homesteads.
- (6) The filing of a declaration of completion.
- (7) The filing of the inventory.

(8) Notice of presentation of personal representative's claim against the estate.

(9) Petition to continue a going business.

(10) Petition to borrow upon the general credit of the estate.

Such requests shall state the post office address of such heir, devisee, distributee, legatee or creditor, or his attorney, and thereafter a brief notice of the filing of any of such petitions, accounts, declaration, inventory or claim, except petitions for sale of perishable property, or other personal property which will incur expense or loss by keeping, shall be addressed to such heir, devisee, distributee, legatee or creditor, or his attorney, at his stated post office address, and deposited in the United States post office, with the postage thereon prepaid, at least ten days before the hearing of such petition, account or claim; or personal service of such notices may be made on such heir, devisee, distributee, legatee, or creditor, or attorney, not less than five days before such hearing, and such personal service shall be equivalent to such deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of such petition, account or claim. If upon the hearing it shall appear to the satisfaction of the court that the said notice has been regularly given, the court shall so find in its order or judgment, and such judgment shall be final and conclusive. [1965 c 145 § 11.28.240. Prior: 1941 c 206 § 1; 1939 c 132 § 1; 1917 c 156 § 64; Rem. Supp. 1941 § 1434.]

*Award in lieu of homestead—Notice of hearing: RCW 11.52.014.*

*Awards—Closure of estate: RCW 11.52.050.*

*Borrowing on general credit of estate—Petition—Notice—Hearing: RCW 11.56.280.*

*Claim of personal representative: RCW 11.40.140.*

*Continuation of decedent's business: RCW 11.48.025.*

*Purchase of claims by personal representative: RCW 11.48.080.*

*Report of personal representative, notice of hearing: RCW 11.76.020, 11.76.040.*

*Sales, exchanges, leases, mortgages and borrowing: Chapter 11.56 RCW.*

*Solvency, order of: RCW 11.68.010.*

**11.28.250 Revocation of letters—Causes.** Whenever the court has reason to believe that any personal representative has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such personal representative, or for any other cause or reason which to the court appears necessary, it shall have power and authority, after notice and hearing to revoke such letters. The manner of the notice and of the service of the same and of the time of hearing shall be wholly in the discretion of the court, and if the court for any such reasons revokes such letters the powers of such personal representative shall at once cease, and it shall be the duty of the court to immediately appoint some other personal representative, as in this title provided. [1965 c 145 § 11.28.250. Prior: 1917 c 156 § 74; RRS § 1444; prior: Code 1881 § 1414; 1863 p 218 § 112; 1860 p 186 § 114.]

*Absentee estates, removal of trustee:* RCW 11.80.060.

*Accounting on revocation of letters:* RCW 11.28.290.

*Administrator de bonis non:* RCW 11.28.280.

*Cancellation of letters of administration:* RCW 11.28.160.

*Effect on compensation of personal representative who fails to discharge duties:* RCW 11.48.210.

*Nonintervention wills—Procedure when executor recreant to trust:* RCW 11.68.030.

*Notice to creditors when personal representative removed:* RCW 11.40.150.

*Revocation of letters by discovery of will:* RCW 11.28.150.

*Revocation of letters upon conviction of crime or becoming of unsound mind:* RCW 11.36.010.

**11.28.260 Revocation of letters—Proceedings in court or chambers.** The applications and acts authorized by RCW 11.28.250 may be heard and determined in court or at chambers. All orders made therein must be entered upon the minutes of the court. [1965 c 145 § 11.28.260. Prior: 1917 c 156 § 75; RRS § 1445; prior: 1891 p 384 § 17; Code 1881 § 1413; 1877 p 213 § 4.]

**11.28.270 Powers of remaining personal representatives if letters to associates revoked.** If there be more than one personal representative of an estate, and the letters to part of them be revoked or surrendered, or a part die or in any way become disqualified, those who remain shall perform all the duties required by law. [1965 c 145 § 11.28.270. Prior: 1917 c 156 § 76; RRS § 1446; prior: Code 1881 § 1427; 1854 p 273 § 38.]

**11.28.280 Administrator de bonis non.** If the personal representative of an estate dies, resigns, or the letters are revoked before the settlement of the estate, letters of administration of the estate remaining unadministered shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator de bonis non shall perform like duties and incur like liabilities as the former personal representative, and shall serve as administrator with will annexed de bonis non in the event a will has been admitted to probate. Said administrator de bonis non may, upon satisfying the requirements and complying with the procedures provided in chapter 11.68 RCW, administer the estate of the decedent without the intervention of court. [1974 1st ex.s. c 117 § 26; 1965 c 145 § 11.28.280. Prior: 1955 c 205 § 8; 1917 c 156 § 77; RRS § 1447; prior: Code 1881 § 1428.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.28.290 Accounting on death, resignation, or revocation of letters.** If any personal representative resign, or his letters be revoked, or he die, he or his representatives shall account for, pay, and deliver to his successor or to the surviving or remaining personal representatives, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such time and in such manner as the court shall order on final settlement with such personal representative or his legal representatives.

[1965 c 145 § 11.28.290. Prior: 1917 c 156 § 78; RRS § 1448; prior: Code 1881 § 1429; 1854 p 273 § 40.]

**11.28.300 Proceedings against delinquent personal representative.** The succeeding administrator, or remaining personal representative may proceed by law against any delinquent former personal representative, or his personal representatives, or the sureties of either, or against any other person possessed of any part of the estate. [1965 c 145 § 11.28.300. Prior: 1917 c 156 § 79; RRS § 1449; prior: 1891 p 384 § 20; Code 1881 § 1430; 1854 p 273 § 41.]

*Limitation of action against sureties:* RCW 11.28.235.

**11.28.330 Notice of adjudication of testacy or intestacy and heirship—Contents—Service or mailing.** If no personal representative is appointed to administer the estate of a decedent, the person obtaining the adjudication of testacy, or intestacy and heirship, shall cause written notice of said adjudication to be mailed to each heir, legatee, and devisee of the decedent, which notice shall contain the name of the decedent's estate and the probate cause number, and shall:

- (1) State the name and address of the applicant;
- (2) State that on the ----- day of -----, 19\_\_\_, the applicant obtained an order from the superior court of ----- county, state of Washington, adjudicating that the decedent died intestate, or testate, whichever shall be the case;
- (3) In the event the decedent died testate, enclose a copy of his will therewith, and state that the adjudication of testacy will become final and conclusive for all legal intents and purposes unless any heir, legatee, or devisee of the decedent shall contest said will within four months after the date the said will was adjudicated to be the last will and testament of the decedent;
- (4) In the event that the decedent died intestate, set forth the names and addresses of the heirs of the decedent, their relationship to the decedent, the distributive shares of the estate of the decedent which they are entitled to receive, and that said adjudication of intestacy and heirship shall become final and conclusive for all legal intents and purposes, unless, within four months of the date of said adjudication of intestacy, a petition shall be filed seeking the admission of a will of the decedent for probate, or contesting the adjudication of heirship.

Notices provided for in this section may be served personally or sent by regular mail, and proof of such service or mailing shall be made by an affidavit filed in the cause. [1974 1st ex.s. c 117 § 31.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.28.340 Order of adjudication of testacy or intestacy and heirship—Entry—Time limitation—Deemed final decree of distribution, when—Purpose—Finality of adjudications.** Unless, within four months after the entry of the order adjudicating testacy or intestacy and heirship, and the mailing of the notice required in RCW 11.28.330 any heir, legatee or devisee of the decedent shall offer a later will for probate or

contest an adjudication of testacy in the manner provided in this title for will contests, or offer a will of the decedent for probate following an adjudication of intestacy and heirship, or contesting the determination of heirship, an order adjudicating testacy or intestacy and heirship without appointing a personal representative to administer a decedent's estate shall, as to those persons by whom notice was waived or to whom said notice was mailed, be deemed the equivalent of the entry of a final decree of distribution in accordance with the provisions of chapter 11.76 RCW for the purpose of:

(1) Establishing the decedent's will as his last will and testament and persons entitled to receive his estate thereunder; or

(2) Establishing the fact that the decedent died intestate, and those persons entitled to receive his estate as his heirs at law.

The right of an heir, legatee, or devisee to receive the assets of a decedent shall, to the extent otherwise provided by this title, be subject to the prior rights of the decedent's creditors and of any persons entitled to a homestead award or award in lieu of homestead or family allowance, and nothing contained in this section shall be deemed to alter or diminish such prior rights, or to prohibit any person for good cause shown, from obtaining the appointment of a personal representative to administer the estate of the decedent after the entry of an order adjudicating testacy or intestacy and heirship. However, if the petition for letters testamentary or of administration shall be filed more than four months after the date of the adjudication of testacy or of intestacy and heirship, the issuance of such letters shall not affect the finality of said adjudications. [1974 1st ex.s. c 117 § 32.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

### Chapter 11.32 SPECIAL ADMINISTRATORS

#### Sections

|           |  |
|-----------|--|
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**11.32.010 Appointment of.** When, by reason of an action concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge may, in his discretion, appoint a special administrator (other than one of the parties) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust until he shall be otherwise ordered by the appellate court. [1965 c 145 § 11.32.010. Prior: 1917 c 156 § 81; RRS § 1451; prior: 1891 p 384 § 19; Code 1881 § 1419; 1863 p 222 § 137; 1860 p 184 § 104.]

**11.32.020 Bond.** Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge shall order, payable to the state of Washington, with conditions as required of an executor or in other cases of administration: *Provided*, That in all cases where a bank or trust company authorized to act as administrator is appointed special administrator or acts as special administrator under an appointment as such heretofore made, no bond shall be required. [1965 c 145 § 11.32.020. Prior: 1963 c 46 § 2; 1917 c 156 § 82; RRS § 1452; prior: Code 1881 § 1420; 1863 pp 220, 222 §§ 126, 138; 1860 pp 183, 184 §§ 93, 105.]

*Bond of personal representative: RCW 11.28.180.*

**11.32.030 Powers and duties.** Such special administrator shall collect all the goods, chattels, money, effects, and debts of the deceased, and preserve the same for the personal representative who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and make family allowances under the order of the court. The appointment may be for a specified time, to perform duties respecting specific property, or to perform particular acts, as stated in the order of appointment. Such special administrator shall be allowed such compensation for his services as the said court shall deem reasonable, together with reasonable fees for his attorney. [1965 c 145 § 11.32.030. Prior: 1917 c 156 § 83; RRS § 1453; prior: Code 1881 § 1421; 1863 p 222 § 139; 1860 p 185 § 106.]

**11.32.040 Succession by personal representative.** Upon granting letters testamentary or of administration the power of the special administrator shall cease, and he shall forthwith deliver to the personal representative all the goods, chattels, money, effects, and debts of the deceased in his hands, and the personal representative may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former personal representative. The estate shall be liable for obligations incurred by the special administrator pursuant to the order of appointment or approved by the court. [1965 c 145 § 11.32.040. Prior: 1917 c 156 § 84; RRS § 1454; prior: Code 1881 § 1422; 1863 p 233 § 140; 1860 p 185 § 107.]

**11.32.050 Not liable to creditors.** Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted. [1965 c 145 § 11.32.050. Prior: 1917 c 156 § 85; RRS § 1455; prior: Code 1881 § 1423; 1863 p 223 § 141; 1860 p 185 § 108.]

**11.32.060 To render account.** The special administrator shall also render an account, under oath, of his proceedings, in like manner as other administrators are

required to do. [1965 c 145 § 11.32.060. Prior: 1917 c 156 § 86; RRS § 1456; prior: Code 1881 § 1424; 1863 p 223 § 142; 1860 p 185 § 109.]

*Settlement of estates: Chapter 11.76 RCW.*

### Chapter 11.36 QUALIFICATIONS OF PERSONAL REPRESENTATIVES

#### Sections

11.36.010 Parties disqualified—Result of disqualification after appointment.

**11.36.010 Parties disqualified—Result of disqualification after appointment.** The following persons are not qualified to act as personal representatives: Corporations, minors, persons of unsound mind, or who have been convicted of any felony or of a misdemeanor involving moral turpitude: *Provided*, That trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of decedents' or incompetents' estates upon petition of any person having a right to such appointment and may act as executors or guardians when so appointed by will. But no trust company or national bank shall be entitled to qualify as such executor or guardian under any will hereafter drawn by it, or its agents or employees, and no salaried attorney of any such company shall be allowed any attorney fee for probating any such will, or in relation to the administration or settlement of any such estate, and no part of any attorney fee shall inure, directly or indirectly, to the benefit of any trust company or national bank. And when any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of becoming of unsound mind, or being convicted of any crime or misdemeanor involving moral turpitude, the court having jurisdiction shall revoke his or her letters. A nonresident may be appointed to act as personal representative if he shall appoint an agent, who is a resident of the county where such estate is being probated, or, who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.200, such nonresident personal representative shall file a bond to be approved by the court. [1965 c 145 § 11.36.010. Prior: 1959 c 43 § 1; 1917 c 156 § 87; RRS § 1457; prior: Code 1881 § 1409; 1863 p 227 § 164; 1860 p 189 § 131.]

*Rules of court: Counsel fees: SPR 98.12W.*

*Banks and trust companies may act as guardian: RCW 11.88.020.*

*Procedure during minority or absence of executor: RCW 11.28.040.*

*Trust company may act as personal representative: RCW 30.08.150.*

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### Chapter 11.40 CLAIMS AGAINST ESTATE

#### Sections

11.40.010 Publication of notice to creditors—Manner—Failure to file—Proof of publication—When not required.

11.40.011 Service and filing of claims involving liability or casualty insurance—Limitations.

11.40.020 Claims—Contents—Form—Affidavit not required.

11.40.030 Allowance or rejection of claims—Time limitation for rejection—Notification of rejection—Requirements—Compromise of claim.

11.40.040 Effect of allowance.

11.40.060 Suit on rejected claim.

11.40.070 Outlawed claims.

11.40.080 Claims must be presented.

11.40.090 Limitation tolled by vacancy.

11.40.100 Action pending at death of testator—Substitution of personal representative as defendant.

11.40.110 Partial allowance of claim—Costs.

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11.40.130 Judgment against decedent—Payment.

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11.40.150 Notice to creditors when personal representative resigns, dies, or is removed.

*Action on claim not acted on—Contribution: RCW 11.76.170.*

*Allowance of claims must precede payment: RCW 11.76.140.*

*Contingent or disputed claims, procedure: RCW 11.76.190.*

*Evidence, transaction with person since deceased: RCW 5.60.030.*

*Guardianship—Claims: RCW 11.92.035.*

*Incompetent, deceased, claims against estate of: RCW 11.88.150.*

*Inheritance taxes, payment: Chapter 83.44 RCW.*

*Judgment against executor or administrator, effect: RCW 4.56.050.*

*Liability of personal representative: RCW 11.76.160.*

*Limitation of actions: Chapter 4.16 RCW.*

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*Order of payment of debts: RCW 11.76.110.*

*Payment of claims where estate insufficient: RCW 11.76.150.*

*Sale, etc., of property—Priority as to realty or personalty: RCW 11.56.015.*

*Survival of actions: Chapter 4.20 RCW.*

*Tax constitutes debt—Priority of lien: RCW 82.32.240.*

**11.40.010 Publication of notice to creditors—Manner—Failure to file—Proof of publication—When not required.** Every personal representative shall, immediately after his appointment, cause to be published in a legal newspaper published in the county in which the estate is being administered, a notice that he has been appointed and has qualified as such personal representative, and therewith a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the personal representative or his attorney of record, and file an executed copy thereof with the clerk of the court, within four months after the date of the first publication of such notice or within four months after the date of the filing of the copy of said notice to creditors with the clerk of the court, whichever is the later. Such notice shall be published once in each week for three successive weeks and a copy of said notice shall be filed with the clerk of the court. If a claim be not filed within the time aforesaid, it shall be barred, except under those provisions included in RCW 11.40.011. Proof by affidavit of the publication of such notice shall be filed with the court by the personal representative. In cases where all the property

is awarded to the widow, husband, or children as in this title provided, the notice to creditors herein provided for may be omitted. [1974 1st ex.s. c 117 § 33; 1967 c 168 § 7; 1965 c 145 § 11.40.010. Prior: 1923 c 142 § 3; 1917 c 156 § 107; RRS § 1477; prior: Code 1881 § 1465; 1860 p 195 § 157; 1854 p 280 § 78.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

*Publication of legal notices: Chapter 65.16 RCW.*

*Settlement without intervention, notice to creditors: RCW 11.68.010.*

**11.40.011 Service and filing of claims involving liability or casualty insurance—Limitations.** The four-month time limitation for serving and filing of claims shall not accrue to the benefit of any liability or casualty insurer as to claims against the deceased and/or the marital community of which the deceased was a member and such claims may at any time within eighteen months after the date of the first publication of notice to creditors be:

(1) Served on the personal representative, or the attorney for the estate; or

(2) If the personal representative shall have been discharged, then the claimant as a creditor may cause a new personal representative to be appointed and the estate to be reopened in which case service may be had upon the new personal representative or his attorney of record.

Claims may be served and filed as herein provided, notwithstanding the conclusion of any probate proceedings: *Provided*, That the amount of recovery under such claims shall not exceed the amount of applicable insurance coverages and proceeds: *And provided further*, That such claims so served and filed shall not constitute a cloud or lien upon the title to the assets of the estate under probate nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate subject to such probate. [1967 ex.s. c 106 § 3.]

**Reviser's note:** 1967 c 168 § 8 added a new section to chapter 145, Laws of 1965 and to chapter 11.40 RCW to be designated as RCW 11.40.011. 1967 c 168 § 8 was repealed by 1967 ex.s. c 106 § 4.

**Effective date—1967 ex.s. c 106:** The effective date of this section is July 1, 1967, see note following RCW 11.56.110.

**11.40.020 Claims—Contents—Form—Affidavit not required.** Every claim shall be signed by the claimant, or his attorney, or any person who is authorized to sign claims on his, her, or its behalf, and shall contain the following information:

- (1) The name and address of the claimant;
- (2) The name, business address (if different from that of the claimant), and nature of authority of any person signing the claim on behalf of the claimant;
- (3) A written statement of the facts or circumstances constituting the basis upon which the claim is submitted;
- (4) The amount of the claim;
- (5) If the claim is secured, unliquidated or contingent, or not yet due, the nature of the security, the nature of the uncertainty, and due date of the claim: *Provided however*, That failure to describe correctly the security,

nature of any uncertainty, or the due date of a claim not yet due, if such failure is not substantially misleading, does not invalidate the presentation made.

Claims need not be supported by affidavit. [1974 1st ex.s. c 117 § 34; 1965 c 145 § 11.40.020. Prior: 1917 c 156 § 108; RRS § 1478; prior: 1883 p 29 § 1; Code 1881 § 1468.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.40.030 Allowance or rejection of claims—Time limitation for rejection—Notification of rejection—Requirements—Compromise of claim.** Unless the personal representative shall, within six months after the date of first publication of notice to creditors, have obtained an order extending the time for his allowance or rejection of claims timely and properly served and filed, all claims presented within the time and in the manner provided in RCW 11.40.010 and 11.40.020 as now or hereafter amended, shall be deemed allowed and may not thereafter be rejected, unless the personal representative shall, within six months after the date of first publication of notice to creditors, or any extended time, notify the claimant of its rejection, in whole or in part; if the personal representative shall reject the claim, in whole or in part, he shall notify the claimant of said rejection and file in the office of the clerk, an affidavit showing such notification and the date thereof. Said notification shall be by personal service or certified mail addressed to the claimant at his address as stated in the claim; if a person other than the claimant shall have signed said claim for or on behalf of the claimant, and said person's business address as stated in said claim is different from that of the claimant, notification of rejection shall also be made by personal service or certified mail upon said person; the date of the postmark shall be the date of notification. The notification of rejection shall advise the claimant, and the person making claim on his, her, or its behalf, if any, that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or before expiration of the time for serving and filing claims against the estate, whichever period is longer, and that otherwise the claim will be forever barred.

The personal representative may, either before or after rejection of any claim compromise said claim, whether due or not, absolute or contingent, liquidated or unliquidated, if it appears to the personal representative that such compromise is in the best interests of the estate. [1974 1st ex.s. c 117 § 35; 1965 c 145 § 11.40.030. Prior: 1963 c 43 § 1; 1917 c 156 § 109; RRS § 1479; prior: Code 1881 § 1469; 1873 p 285 § 156; 1854 p 281 § 82.]

**Rules of court:** *SPR 98.08W, 98.10W, 98.12W.*

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.40.040 Effect of allowance.** Every claim which has been allowed by the personal representative shall be ranked among the acknowledged debts of the estate to be paid in the course of administration. [1974 1st ex.s. c

117 § 36; 1965 c 145 § 11.40.040. Prior: 1917 c 156 § 110; RRS § 1480; prior: Code 1881 § 1470; 1854 p 281 § 83.]

**Application, construction—Severability—Effective date—1974**  
1st ex.s. c 117: See RCW 11.02.080 and notes following.

*Order of payment of debts: RCW 11.76.110.*

**11.40.060 Suit on rejected claim.** When a claim is rejected by the personal representative, the holder must bring suit in the proper court against the personal representative within thirty days after notification of the rejection or before expiration of the time for serving and filing claims against the estate, whichever period is longer, otherwise the claim shall be forever barred. [1974 1st ex.s. c 117 § 37; 1965 c 145 § 11.40.060. Prior: 1917 c 156 § 112; RRS § 1482; prior: Code 1881 § 1472; 1873 p 285 § 159; 1869 p 166 § 665; 1854 p 281 § 84.]

**Application, construction—Severability—Effective date—1974**  
1st ex.s. c 117: See RCW 11.02.080 and notes following.

**11.40.070 Outlawed claims.** No claim shall be allowed by the personal representative or court which is barred by the statute of limitations. [1965 c 145 § 11.40.070. Prior: 1917 c 156 § 113; RRS § 1483; prior: Code 1881 § 1473; 1854 p 281 § 85.]

**11.40.080 Claims must be presented.** No holder of any claim against a decedent shall maintain an action thereon, unless the claim shall have been first presented as herein provided. [1965 c 145 § 11.40.080. Prior: 1917 c 156 § 114; RRS § 1484; prior: Code 1881 § 1474; 1854 p 281 § 86.]

**11.40.090 Limitation tolled by vacancy.** The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed. [1965 c 145 § 11.40.090. Prior: 1917 c 156 § 115; RRS § 1485; prior: Code 1881 § 1475; 1854 p 281 § 87.]

**11.40.100 Action pending at death of testator—Substitution of personal representative as defendant.** If any action be pending against the testator or intestate at the time of his death, the plaintiff shall within four months after first publication of notice to creditors, or the filing of a copy of such notice, whichever is later, serve on the personal representative a motion to have such personal representative, as such, substituted as defendant in such action, and, upon the hearing of such motion, such personal representative shall be so substituted, unless, at or prior to such hearing, the claim of plaintiff, together with costs, be allowed by the personal representative and court. After the substitution of such personal representative, the court shall proceed to hear and determine the action as in other civil cases. [1974 1st ex.s. c 117 § 47; 1965 c 145 § 11.40.100. Prior: 1917 c 156 § 116; RRS § 1486; prior: Code 1881 § 1476; 1854 p 281 § 88.]

**Application, construction—Severability—Effective date—1974**  
1st ex.s. c 117: See RCW 11.02.080 and notes following.

**11.40.110 Partial allowance of claim—Costs.** Whenever any claim shall have been filed and presented to a personal representative, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the personal representative unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs. [1974 1st ex.s. c 117 § 38; 1965 c 145 § 11.40.110. Prior: 1917 c 156 § 117; RRS § 1487; prior: Code 1881 § 1477; 1854 p 282 § 89.]

*Rules of court: SPR 98.08W.*

**Application, construction—Severability—Effective date—1974**  
1st ex.s. c 117: See RCW 11.02.080 and notes following.

**11.40.120 Effect of judgment against personal representative.** The effect of any judgment rendered against any personal representative shall be only to establish the amount of the judgment as an allowed claim. [1965 c 145 § 11.40.120. Prior: 1917 c 156 § 118; RRS § 1488; prior: Code 1881 § 1478; 1854 p 282 § 90.]

**11.40.130 Judgment against decedent—Payment.** When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the personal representative, as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: *Provided, however,* That if it be a lien on any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the personal representative for any surplus in his hands. [1965 c 145 § 11.40.130. Prior: 1917 c 156 § 119; RRS § 1489; prior: Code 1881 § 1479; 1854 p 292 § 91.]

**11.40.140 Claim of personal representative.** If the personal representative is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be filed and presented for allowance or rejection to the judge of the court, and its allowance by the judge shall be sufficient evidence of its correctness. This section shall apply to nonintervention and all other wills. [1965 c 145 § 11.40.140. Prior: 1917 c 156 § 120; RRS § 1490; prior: Code 1881 § 1482; 1854 p 283 § 94.]

*Request for special notice in proceedings in probate: RCW 11.28.240.*

**11.40.150 Notice to creditors when personal representative resigns, dies, or is removed.** In case of resignation, death or removal for any cause of any personal representative, and the appointment of another or others, after notice has been given by publication as required by RCW 11.40.010, by such personal representative first appointed, to persons to file their claims against the decedent, it shall be the duty of the successor or personal representative to cause notice of such resignation, death or removal and such new appointment to be published two successive weeks in a legal newspaper published in the county in which the estate is being administered, but the time between the

resignation, death or removal and such publication shall be added to the time within which claims shall be filed as fixed by the published notice to creditors unless such time shall have expired before such resignation or removal or death: *Provided, however,* That no such notice shall be required if the period for filing claims was fully expired during the time that the former personal representative was qualified. [1965 c 145 § 11.40.150. Prior: 1939 c 26 § 1; 1917 c 156 § 121; RRS § 1491; prior: 1891 c 155 § 28; Code 1881 § 1485; 1873 p 288 § 172; 1867 p 106 § 3.]

### Chapter 11.44

## INVENTORY AND APPRAISEMENT

#### Sections

- 11.44.015 Inventory.
- 11.44.025 Additional inventory.
- 11.44.035 Inventory or appraisement may be contradicted.
- 11.44.050 Failure to return inventory—Revocation of letters.
- 11.44.061 Value for appraisement and inheritance tax purposes.
- 11.44.066 Duties of personal representative—Assistants—Filing—Copies.
- 11.44.070 Compensation of persons assisting in appraisement—Refund.
- 11.44.085 Claims against personal representative to be included.
- 11.44.090 Discharge of debt to be construed as specific bequest and included.

*Bank deposit—Payment to surviving spouse—Accounting to estate: RCW 30.20.020.*

*Partnerships, inventory and appraisement: RCW 11.64.002.*

**11.44.015 Inventory.** Within three months after his appointment, unless a longer time shall be granted by the court, every personal representative shall make and return upon oath into the court a true inventory of all of the property of the estate which shall have come to his possession or knowledge, including a statement of all encumbrances, liens or other secured charges against any item. Such property shall be classified as follows:

- (1) Real property, by legal description and assessed valuation of land and improvements thereon;
- (2) Stocks and bonds;
- (3) Mortgages, notes, and other written evidences of debt;
- (4) Bank accounts and money;
- (5) Furniture and household goods;
- (6) All other personal property accurately identified, including the decedent's proportionate share in any partnership, but no inventory of the partnership property shall be required of the personal representative. [1967 c 168 § 9; 1965 c 145 § 11.44.015. Former RCW sections, RCW 11.44.010, part and 11.44.020, part.]

*Inventory, settlement of estates without administration: RCW 11.68.010.*

*Inventory and appraisement on death of partner—Filing: RCW 11.64.002.*

*Right to wind up partnership: RCW 25.04.370.*

**11.44.025 Additional inventory.** Whenever any property of the estate not mentioned in the inventory comes to the knowledge of a personal representative, he shall cause the same to be inventoried and appraised and shall make and return upon oath into the court a true inventory of said property within thirty days after the

discovery thereof, unless a longer time shall be granted by the court. [1974 1st ex.s. c 117 § 48; 1965 c 145 § 11.44.025. Prior: 1917 c 156 § 100; RCW 11.44.060; RRS § 1470; prior: Code 1881 § 1453; 1873 p 281 § 138; 1854 p 277 § 64.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.44.035 Inventory or appraisement may be contradicted.** In an action against the personal representative where his administration of the estate, or any part thereof, is put in issue and the inventory of the estate returned by him, or the appraisal thereof is given in evidence, the same may be contradicted or avoided by evidence. Any party in interest in the estate may challenge the inventory or appraisement at any stage of the probate proceedings. [1965 c 145 § 11.44.035. Prior: Code 1881 § 721; 1877 p 146 § 725; 1869 p 166 § 662; RCW 11.48.170; RRS § 970.]

**11.44.050 Failure to return inventory—Revocation of letters.** If any personal representative shall neglect or refuse to return the inventory within the period prescribed, or within such further time as the court may allow, the court may revoke the letters testamentary or of administration; and the personal representative shall be liable on his bond to any party interested for the injury sustained by the estate through his neglect. [1965 c 145 § 11.44.050. Prior: 1917 c 156 § 99; RRS § 1469; prior: Code 1881 § 1457; 1873 p 281 § 138; 1854 p 278 § 69.]

**11.44.061 Value for appraisement and inheritance tax purposes.** The value of the estate and effects of deceased persons determined under the probate law shall be the value for appraisement and inheritance tax purposes, except where the same estate is valued for federal estate tax purposes, and the valuation is adjusted according to federal appraisement in accordance with RCW 83.40.040. [1965 c 145 § 11.44.060.]

**Reviser's note:** The above section was enacted as 1965 c 145 § 11.44.060. It is herein codified as RCW 11.44.061 to avoid confusion with former RCW 11.44.060. "Additional inventory." [1917 c 156 § 100; RRS § 1470] which 1965 c 145 repealed and reenacted as RCW 11.44.025.

**11.44.066 Duties of personal representative—Assistants—Filing—Copies.** Within the time required to file an inventory as provided in RCW 11.44.015, the personal representative shall determine the fair net value, as of the date of the decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges thereon. The personal representative may employ a qualified and disinterested person to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The appraisement may, but need not be, filed in the probate cause: *Provided however,* That upon receipt of a written request for a copy of said inventory and appraisement from any heir, legatee, devisee or unpaid



creditor who has filed a claim, or from the inheritance tax division of the department of revenue, the personal representative shall furnish to said person, a true and correct copy thereof. [1974 1st ex.s. c 117 § 49.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.44.070 Compensation of persons assisting in appraisal—Refund.** The amount of the fee to be paid to any persons assisting the personal representative in any appraisal shall be determined by the personal representative: *Provided however*, That the reasonableness of any such compensation shall, at the time of hearing on any final account as provided in chapter 11.76 RCW or on a request or petition under RCW 11.68.100 or 11.68.110, be reviewed by the court in accordance with the provisions of RCW 11.68.100, and if the court determines the compensation to be unreasonable, a personal representative may be ordered to make appropriate refund. [1974 1st ex.s. c 117 § 50; 1967 c 168 § 10; 1965 c 145 § 11.44.070. Formerly RCW 11.44.010, part.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**Effective date—1965 c 145:** The effective date of this section is July 1, 1965, see RCW 11.99.010.

**11.44.085 Claims against personal representative to be included.** The naming or the appointment of any person as personal representative shall not operate as a discharge from any just claim which the testator or intestate had against the personal representative, but the claim shall be included in the inventory and the personal representative shall be liable to the same extent as he would have been had he not been appointed personal representative. [1965 c 145 § 11.44.085. Prior: 1917 c 156 § 97; RCW 11.44.030; RRS § 1467; prior: Code 1881 § 1449; 1860 p 63 § 5; 1854 p 277 § 60.]

**11.44.090 Discharge of debt to be construed as specific bequest and included.** The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will or against any person shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportions as other specific legacies. [1965 c 145 § 11.44.090. Prior: 1917 c 156 § 98; RCW 11.44.040; RRS § 1468; prior: Code 1881 § 1450; 1854 p 277 § 61.]

#### Chapter 11.48

### PERSONAL REPRESENTATIVES—GENERAL PROVISIONS—ACTIONS BY AND AGAINST

#### Sections

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#### Rules of court: Executors

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*judges, limitation on holding executorship: CJE 27.*

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*Declaratory judgments, rights of executors, etc.: RCW 7.24.040.*

*Ejectment and quieting title: Chapter 7.28 RCW.*

*Evidence, transaction with person since deceased: RCW 5.60.030.*

*Execution of writ—Levy: RCW 6.04.100.*

*Execution on judgments in name of personal representative: RCW 6.04.070.*

*Executor, administrator, subject to garnishment: RCW 7.12.180.*

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*Frauds, statute of, agreement of personal representative to answer damages from own estate: RCW 19.36.010.*

*Investment in certain federal securities authorized: Chapter 39.60 RCW.*

*Judgment against executor, administrator, effect: RCW 4.56.050.*

*Justice of peace without jurisdiction as to actions against personal representative: RCW 3.20.030, 3.66.030.*

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*Limitation of actions*

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*Unknown heirs, pleading, process, lis pendens, etc: RCW 4.28.130-4.28.160; Rules of court: CR 10.*

*Witnesses, competency in actions involving representatives or fiduciaries: RCW 5.60.030.*

**11.48.010 General powers and duties.** It shall be the duty of every personal representative to settle the estate in his hands as rapidly and as quickly as possible, without sacrifice to the estate. He shall collect all debts due the deceased and pay all debts as hereinafter provided. He shall be authorized in his own name to maintain

and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character. [1965 c 145 § 11.48.010. Prior: 1917 c 156 § 147; RRS § 1517; prior: Code 1881 § 1528; 1854 p 291 § 141.]

**11.48.020 Right to possession and management of estate.** Every personal representative shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the court, to the heirs or devisees, and shall keep in tenable repair all houses, buildings and fixtures thereon, which are under his control. [1965 c 145 § 11.48.020. Prior: 1917 c 156 § 94; RRS § 1464; prior: Code 1881 § 1444; 1860 p 189 § 132; 1854 p 278 § 65.]

*When title vests:* RCW 11.04.250.

**11.48.025 Continuation of decedent's business.** Upon a showing of advantage to the estate the court may authorize a personal representative to continue any business of the decedent, other than the business of a partnership of which the decedent was a member: *Provided*, That if decedent left a nonintervention will or a will specifically authorizing a personal representative to continue any business of decedent, and his estate is solvent, or a will providing that the personal representative liquidate any business of decedent, this section shall not apply.

The order shall specify:

- (1) The extent of the authority of the personal representative to incur liabilities;
- (2) The period of time during which he may operate the business;
- (3) Any additional provisions or restrictions which the court may, at its discretion, include.

Any interested person may for good cause require the personal representative to show cause why the authority granted him should not be limited or terminated. The order to show cause shall set forth the manner of service thereof and the time and place of hearing thereon. [1965 c 145 § 11.48.025. Prior: 1955 c 98 § 1.]

*Request for special notice of proceedings in probate:* RCW 11.28.240.

**11.48.030 Chargeable with whole estate.** Every personal representative shall be chargeable in his accounts with the whole estate of the deceased which may come into his possession. He shall not be responsible for loss or decrease or destruction of any of the property or effects of the estate, without his fault. [1965 c 145 § 11.48.030. Prior: 1917 c 156 § 155; RRS § 1525; prior: Code 1881 § 1538; 1860 p 210 § 241; 1854 p 295 § 161.]

**11.48.040 Not chargeable on special promise to pay decedent's debts unless in writing.** No personal representative shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement

for that purpose, or some memorandum or note thereof, is in writing and signed by such personal representative, or by some other person by him thereunto specially authorized. [1965 c 145 § 11.48.040. Prior: 1917 c 156 § 154; RRS § 1524; prior: Code 1881 § 1537; 1854 p 295 § 160.]

*Agreement to answer damages from own estate must be in writing:* RCW 19.36.010.

**11.48.050 Allowance of necessary expenses.** He shall be allowed all necessary expenses in the care, management and settlement of the estate. [1965 c 145 § 11.48.050. Prior: 1917 c 156 § 156; RRS § 1526; prior: Code 1881 § 1541; 1854 p 295 § 164.]

*Rules of court:* SPR 98.12W.

*Attorney's fee to contestant of erroneous account or report:* RCW 11.76.070.

*Broker's fee and closing expenses—Sale, mortgage or lease:* RCW 11.56.265.

*Compensation—Attorney's fee:* RCW 11.48.210.

*Monument, expense of:* RCW 11.76.130.

*Order of payment of debts:* RCW 11.76.110.

*Will contests, costs:* RCW 11.24.050.

**11.48.060 May recover for embezzled or alienated property of decedent.** If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the personal representative of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate. [1965 c 145 § 11.48.060. Prior: 1917 c 156 § 101; RRS § 1471; prior: Code 1881 § 1455; 1854 p 278 § 67.]

*Larceny:* RCW 9.54.010(3).

**11.48.070 Concealed or embezzled property—Proceedings for discovery.** The court shall have authority to bring before it any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of decedents or incompetents subject to administration under this title, or who has in his possession or within his knowledge any conveyances, bonds, contracts, or other writings which contain evidence of or may tend to establish the right, title, interest or claim of the deceased in and to any property. If such person be not in the county in which the letters were granted, he may be cited and examined either before the court of the county where found or before the court issuing the order of citation, and if he be found innocent of the charges he shall be entitled to recover costs of the estate, which costs shall be fees and mileage of witnesses, statutory attorney's fees, and such per diem and mileage for the person so charged as allowed to witnesses in civil proceedings. Such party may be brought before the court by means of citation such as the court may choose to issue, and if he refuse to answer such interrogatories as may be put to him touching such matters, the court may commit him to the county jail, there to remain until he shall be willing to make such answers.

[1965 c 145 § 11.48.070. Prior: 1917 c 156 § 102; RRS § 1472; prior: 1891 p 385 §§ 22, 23; Code 1881 §§ 1456, 1457; 1854 p 278 §§ 68, 69.]

*Guardianship—Concealed or embezzled property—Proceedings for discovery: RCW 11.92.185.*  
*Larceny: RCW 9.54.010.*

**11.48.080 Uncollectible debts, liability for—Purchase of claims by personal representative.** No personal representative shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his fault. No personal representative shall purchase any claim against the estate he represents, but the personal representative may make application to the court for permission to purchase certain claims, and if it appears to the court to be for the benefit of the estate that such purchase shall be made, the court may make an order allowing such claims and directing that the same may be purchased by the personal representative under such terms as the court shall order, and such claims shall thereafter be paid as are other claims, but the personal representative shall not profit thereby. [1965 c 145 § 11.48.080. Prior: 1917 c 156 § 157; RRS § 1527; prior: Code 1881 § 1540; 1854 p 295 § 163.]

*Request for special notice of proceedings in probate: RCW 11.28.240.*

**11.48.090 Actions for recovery of property and on contract.** Actions for the recovery of any property or for the possession thereof, and all actions founded upon contracts, may be maintained by and against personal representatives in all cases in which the same might have been maintained by and against their respective testators or intestates. [1965 c 145 § 11.48.090. Prior: 1917 c 156 § 148; RRS § 1518; prior: Code 1881 § 1529; 1860 p 206 § 222; 1854 p 291 § 142.]

*Performance of decedent's contracts: Chapter 11.60 RCW.*  
*Survival of actions: Chapter 4.20 RCW.*

**11.48.120 Action on bond of previous personal representative.** Any personal representative may in his own name, for the benefit of all parties interested in the estate, maintain actions on the bond of a former personal representative of the same estate. [1965 c 145 § 11.48.120. Prior: 1917 c 156 § 151; RRS § 1521; prior: Code 1881 § 1532; 1854 p 291 § 145.]

**11.48.130 Compromise of claims.** The court shall have power to authorize the personal representative to compromise and compound any claim owing the estate. [1965 c 145 § 11.48.130. Prior: 1917 c 156 § 152; RRS § 1522; prior: Code 1881 § 1533; 1854 p 291 § 146.]

*Rules of court: SPR 98.08W.*

**11.48.140 Recovery of decedent's fraudulent conveyances.** When there shall be a deficiency of assets in the hands of a personal representative, and when the deceased shall in his lifetime have conveyed any real estate, or any rights, or interest therein, with intent to defraud his creditors or to avoid any right, duty or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against

creditors, the personal representative may, and it shall be his duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance. [1965 c 145 § 11.48.140. Prior: 1917 c 156 § 153; prior: Code 1881 § 1534; 1854 p 291 § 147.]

**11.48.150 Several personal representatives considered as one.** In an action against several personal representatives, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action. [1965 c 145 § 11.48.150. Prior: Code 1881 § 719; 1877 p 146 § 723; 1869 p 165 § 660; RRS § 968.]

**11.48.160 Default judgment not evidence of assets—Exception.** When a judgment is given against a personal representative for want of answer, such judgment is not to be deemed evidence of assets in his hands, unless it appear that the complaint alleged assets and that the notice was served upon him. [1965 c 145 § 11.48.160. Prior: Code 1881 § 720; 1877 p 146 § 724; 1869 p 166 § 661; RRS § 969.]

**11.48.180 Liability of executor de son tort.** No person is liable to an action as executor of his own wrong for having taken, received or interfered with the property of a deceased person, but is responsible to the personal representatives of such deceased person for the value of all property so taken or received, and for all injury caused by his interference with the estate of the deceased. [1965 c 145 § 11.48.180. Prior: Code 1881 § 722; 1877 p 146 § 726; 1869 p 166 § 663; RRS § 971.]

**11.48.190 Executor of executor may not sue for estate of first testator.** An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof. [1965 c 145 § 11.48.190. Prior: Code 1881 § 723; 1877 p 147 § 727; 1869 p 166 § 664; RRS § 972.]

*Administrator with will annexed on death of executor: RCW 11.28.060.*

**11.48.200 Arrest and attachment, when, authorized.** In an action against a personal representative as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such personal representative, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally. [1965 c 145 § 11.48.200. Prior: Code 1881 § 724; 1877 p 147 § 729; 1869 p 167 § 666; RRS § 973.]

**11.48.210 Compensation—Attorney's fee.** If testator by will makes provision for the compensation of his personal representative, that shall be taken as his full compensation unless he files in the court a written instrument renouncing all claim for the compensation provided by the will before qualifying as personal representative. The personal representative, when no compensation is provided in the will, or when he renounces all claim to the compensation provided in the will, shall be allowed such compensation for his services as the court shall deem just and reasonable. Additional compensation may be allowed for his services as attorney and for other services not required of a personal representative. An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Such compensation may be allowed at the final account; but at any time during administration a personal representative or his attorney may apply to the court for an allowance upon the compensation of the personal representative and upon attorney's fees. If the court finds that the personal representative has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed. [1965 c 145 § 11.48.210. Prior: 1917 c 156 § 158; RRS § 1528; prior: Code 1881 § 1541; 1854 p 295 § 164.]

*Rules of court: SPR 98.12W.*

*Allowance of necessary expenses: RCW 11.48.050.*

*Will contests, costs: RCW 11.24.050.*

## Chapter 11.52 PROVISIONS FOR FAMILY SUPPORT

### Sections

- 11.52.010 Award in lieu of homestead—Petition—Requirements—Amount—Time limit for filing petition.
- 11.52.012 Award—Effect—Conditions under which award may be denied or reduced.
- 11.52.014 Award—Notice of hearing—Appointment of guardian ad litem for incompetents.
- 11.52.016 Award—Finality—Is in lieu—Exempt from debts—Which law applies.
- 11.52.020 Homestead may be awarded to survivor—Decree—Notice—Exclusions—Appointment of guardian ad litem.
- 11.52.022 Award in addition to homestead—Conditions under which such award may be denied or reduced.
- 11.52.024 Homestead and additional award—Finality—Is in lieu—Exempt from debts—Which law applies.
- 11.52.030 Support of minor children.
- 11.52.040 Further allowance for family maintenance.
- 11.52.050 Closure of estate—Discharge of personal representative.

**11.52.010 Award in lieu of homestead—Petition—Requirements—Amount—Time limit for filing petition.** If it is made to appear to the satisfaction of the court that no homestead has been claimed in the manner provided by law, either prior or subsequent to the death of the person whose estate is being administered, then the court, after hearing and upon being satisfied that the funeral expenses, expenses of last sickness and of administration have been paid or provided for, and upon petition for that purpose, shall award and set

off to the surviving spouse, if any, property of the estate, either community or separate, not exceeding the value of twenty thousand dollars at the time of death, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased spouse, and exclusive of the unpaid balance of any contract to purchase, mortgage, or mechanic's, laborer's or materialmen's liens upon the property so set off, and exclusive of funeral expenses, expenses of last sickness and administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse; provided that the court shall have no jurisdiction to make such award unless the petition therefor is filed with the clerk within six years from the date of the death of the person whose estate is being administered. [1974 1st ex.s. c 117 § 7; 1971 ex.s. c 12 § 2; 1967 c 168 § 12; 1965 c 145 § 11.52.010. Prior: 1963 c 185 § 1; 1955 c 205 § 10; 1951 c 264 § 2; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**Severability—1971 ex.s. c 12:** See note following RCW 6.12.050.

**11.52.012 Award—Effect—Conditions under which award may be denied or reduced.** Such award shall be made by an order or judgment of the court and shall vest the absolute title, and thereafter there shall be no further administration upon such portion of the estate so set off, but the remainder of the estate shall be settled as other estates: *Provided*, That no property of the estate shall be awarded or set off, as in RCW 11.52.010 through 11.52.024 provided, to a surviving spouse who has feloniously killed the deceased spouse: *Provided further*, That if it shall appear to the court, either (1) that there are children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) if such surviving spouse or minor children are entitled to receive property including insurance by reason of the death of the deceased spouse in the sum of twenty thousand dollars, or more, then the award in lieu of homestead and exemptions shall lie in the discretion of the court, and that whether there shall be an award and the amount thereof shall be determined by the court, who shall enter such decree as shall be just and equitable but not in excess of the award provided herein. [1974 1st ex.s. c 117 § 8; 1965 c 145 § 11.52.012. Prior: 1951 c 264 § 3; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

*Inheritance rights of slayers: Chapter 11.84 RCW.*

**11.52.014 Award—Notice of hearing—Appointment of guardian ad litem for incompetents.** Notice of such hearing shall be given in the manner prescribed in RCW 11.76.040. If there be any incompetent heir of the decedent, the court shall appoint a guardian ad litem for such incompetent heir, who shall appear at the hearing and represent the interest of such incompetent heir. [1965 c 145 § 11.52.014. Prior: 1951 c 264 § 4; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

*Request for special notice of proceedings in probate:* RCW 11.28.240.

**11.52.016 Award—Finality—Is in lieu—Exempt from debts—Which law applies.** The order of judgment of the court making the award or awards provided for in RCW 11.52.010 through 11.52.024 shall be conclusive and final, except on appeal and except for fraud. The awards in RCW 11.52.010 through 11.52.024 provided shall be in lieu of all homestead provisions of the law and of exemptions. The said property, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of the deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under RCW 11.52.010 through 11.52.024, the court shall not award more property than could be awarded under the law in effect at the time of the granting of the award. [1972 ex.s. c 80 § 1; 1965 c 145 § 11.52.016. Prior: 1951 c 264 § 5; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

**11.52.020 Homestead may be awarded to survivor—Decree—Notice—Exclusions—Appointment of guardian ad litem.** In event a homestead has been, or shall be selected in the manner provided by law, whether the selection of such homestead results in vesting the complete or partial title in the survivor, it shall be the duty of the court, upon petition of any person interested, and upon being satisfied that the value thereof does not exceed twenty thousand dollars at the time of the death, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased and exclusive of the unpaid balance of any contract to purchase, mortgage, or mechanic's, laborer's, or materialmen's liens thereon, and exclusive of funeral expenses, expenses of last sickness and of administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse, to enter a decree, upon notice as provided in RCW 11.52.014 or upon longer notice if the court so orders, setting off and awarding such homestead to the survivor, thereby vesting the title thereto in fee simple in the survivor: *Provided*, That if there be any incompetent heirs of the decedent, the court shall appoint a guardian ad litem for such incompetent heir

who shall appear at the hearing and represent the interest of such incompetent heir. [1974 1st ex.s. c 117 § 9; 1971 ex.s. c 12 § 3; 1967 c 168 § 13; 1965 c 145 § 11.52.020. Prior: 1963 c 185 § 2; 1955 c 205 § 11; 1951 c 264 § 7; 1949 c 102 § 2, part; 1945 c 198 § 1, part; 1927 c 104 § 1, part; 1917 c 156 § 104, part; Rem. Supp. 1949 § 1474, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**Severability—1971 ex.s. c 12:** See note following RCW 6.12.050. *Homesteads: Chapter 6.12 RCW.*

**11.52.022 Award in addition to homestead—Conditions under which such award may be denied or reduced.** If the value of the homestead, exclusive of all such liens, be less than twenty thousand dollars, the court, upon being satisfied that the funeral expenses, expenses of last sickness and of administration, have been paid or provided for, shall set off and award additional property, either separate or community, in lieu of such deficiency, so that the value of the homestead, exclusive of all such liens and expenses when added to the value of the other property awarded, exclusive of all such liens and expenses shall equal twenty thousand dollars: *Provided*, That if it shall appear to the court, either (1) that there are children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) that such surviving spouse is, or any minor child entitled to an award under RCW 11.52.030 is, entitled to receive property including insurance by reason of the death of the deceased spouse, exclusive of property confirmed to the surviving spouse as his or her one-half interest in community property, in the sum of twenty thousand dollars, or more, then the award of property in addition to the homestead, where the homestead is of less than twenty thousand dollars in value, shall lie in the discretion of the court, and that whether there shall be an award in addition to the homestead and the amount thereof shall be determined by the court, who shall enter such decree as shall be just and equitable, but not in excess of the award provided herein. [1974 1st ex.s. c 117 § 10; 1971 ex.s. c 12 § 4; 1965 c 145 § 11.52.022. Prior: 1963 c 185 § 3; 1951 c 264 § 8; 1949 c 102 § 2, part; 1945 c 198 § 1, part; 1927 c 104 § 1, part; 1917 c 156 § 104, part; Rem. Supp. 1949 § 1474, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**Severability—1971 ex.s. c 12:** See note following RCW 6.12.050.

**11.52.024 Homestead and additional award—Finality—Is in lieu—Exempt from debts—Which law applies.** Said decree shall particularly describe the said homestead and other property so awarded, and

such homestead and other property so awarded shall not be subject to further administration, and such decree shall be conclusive and final, except on appeal, and except for fraud, and such awards shall be in lieu of all further homestead rights and of all exemptions. The property in addition to the homestead, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under RCW 11.52.010 through 11.52.024, the court shall not award more property than could be awarded under the law in effect at the time of the granting of the award. [1972 ex.s. c 80 § 2; 1965 c 145 § 11.52.024. Prior: 1951 c 264 § 9; 1949 c 102 § 2, part; 1945 c 198 § 1, part; 1927 c 104 § 1, part; 1917 c 156 § 104, part; Rem. Supp. 1949 § 1474, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

**11.52.030 Support of minor children.** If there be no surviving spouse, the court shall award and set aside to the minor child or children, if any, and in such proportions as he considers proper, property of the estate as the court may consider necessary for the care and support of said minor or minors until they become of legal age, not exceeding in value the amount which the court is now or hereafter empowered to award to a surviving spouse. [1965 c 145 § 11.52.030. Prior: 1949 c 11 § 1; 1917 c 156 § 105; Rem. Supp. 1949 § 1475; prior: Code 1881 § 1463; 1854 p 279 § 75.]

**11.52.040 Further allowance for family maintenance.** In addition to the awards herein provided for, the court may make such further reasonable allowance of cash out of the estate as may be necessary for the maintenance of the family according to their circumstances, during the progress of the settlement of the estate, and any such allowance shall be paid by the personal representative in preference to all other charges, except funeral charges, expenses of last sickness and expenses of administration. [1965 c 145 § 11.52.040. Prior: 1917 c 156 § 106; RRS § 1476; prior: 1891 p 386 § 25, part; 1886 p 171 § 2, part; Code 1881 § 1461, part; 1854 p 279 § 73.]

**11.52.050 Closure of estate—Discharge of personal representative.** If it is made to appear to the court that the amount of funeral expenses, expenses of last illness, expenses of administration, general taxes and special assessments which were liens at the time of the death of the deceased spouse together with the unpaid balance of any contract to purchase, mortgage, or mechanic's, laborer's or materialmen's liens upon the property to be set off under the provisions of RCW 11.52.010 through 11.52.024 together with the amount of the award to be made by the court under the provisions of RCW 11.52.010 through 11.52.040 shall be equal to the gross appraised value of the property of the estate, then the court at the time of making such award shall enter its judgment setting aside all of the property of the estate, subject to the aforementioned charges, to the petitioner,

shall order the estate closed, discharge the executor or administrator and exonerate the executor's or administrator's bond. [1967 c 168 § 14. (i) 1965 c 145 § 11.52.050. (ii) 1965 c 126 § 1.]

## Chapter 11.56 SALES, EXCHANGES, LEASES, MORTGAGES AND BORROWING

|           |   |
|-----------|---|
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*Limitation of actions, recovery of realty sold by executor or administrator: RCW 4.16.070.*

*Registered land, probate may direct sale or mortgage of: RCW 65.12.590.*

*Request for special notice in proceedings in probate: RCW 11.28.240.*

**11.56.005 Authority to exchange.** Whenever it shall appear upon the petition of the personal representative or of any person interested in the estate to be to the best interests of the estate to exchange any real or personal property of the estate for other property, the court may authorize the exchange upon such terms and conditions as it may prescribe, which include the payment or receipt of part cash by the personal representative. If personal property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be; if real property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be. [1965 c 145 § 11.56.005.]

**11.56.010 Authority to sell, lease or mortgage.** The court may order real or personal property sold, leased or mortgaged for the purposes hereinafter mentioned but no sale, lease or mortgage of any property of an estate shall be made except under an order of the court,



unless otherwise provided by law. [1965 c 145 § 11.56.010. Prior: 1917 c 156 § 122; RRS § 1492; prior: 1895 c 157 § 1; 1883 p 29 § 1; Code 1881 § 1486; 1854 p 284 § 97.]

**11.56.015 Priority.** In determining what property of the estate shall be sold, mortgaged or leased for any purpose provided by RCW 11.56.020 and 11.56.030, there shall be no priority as between real and personal property, except as provided by will, if any. [1965 c 145 § 11.56.015.]

*Appropriation to pay debts and expenses: RCW 11.56.150.*

*Community property: Chapter 26.16 RCW.*

*Descent and distribution of real and personal estate: RCW 11.04.015.*

*Payment of claims where estate insufficient: RCW 11.76.150.*

*Sale of generally or specifically devised realty: RCW 11.56.050.*

**11.56.020 Sale, lease or mortgage of personal property.** The court may at any time order any personal property, including for purposes of this section a vendor's interest in a contract for the sale of real estate, of the estate sold for the preservation of such property or for the payment of the debts of the estate or the expenses of administration or for the purpose of discharging any obligation of the estate or for any other reason which may to the court seem right and proper, and such order may be made either upon or without petition therefor, and such sales may be either at public or private sale or by negotiation and with or without notice of such sale, as the court may determine, and upon such terms and conditions as the court may decide upon. No notice of petition for sale of any personal property need be given, except as provided in RCW 11.28.240, unless the court expressly orders such notice.

Where personal property is sold prior to appraisal, the sale price shall be deemed the value for appraisal. Personal property may be mortgaged, pledged or leased for the same reasons and purposes, and in the same manner as is hereinafter provided for real property. [1965 c 145 § 11.56.020. Prior: (i) 1917 c 156 § 123; RRS § 1493; prior: 1891 c 155 §§ 29, 30; 1883 p 29 § 1; Code 1881 § 1488; 1854 p 284 § 99. (ii) 1955 c 205 § 12; RCW 11.56.025.]

*Performance of decedent's contracts: Chapter 11.60 RCW.*

*Sale of decedent's contract interest in land: RCW 11.56.180.*

**11.56.030 Sale, lease or mortgage of real estate—Petition—Notice—Hearing.** Whenever it shall appear to the satisfaction of the court that any portion or all of the real property should be sold, mortgaged or leased for the purpose of raising money to pay the debts and obligations of the estate, and the expenses of administration, inheritance and federal death tax or for the support of the family, to make distribution, or for such other purposes as the court may deem right and proper, the court may order the sale, lease or mortgage of such portion of the property as appears to the court necessary for the purpose aforesaid. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and obligations of the estate and such other

things as will tend to assist the court in determining the necessity for the sale, lease or mortgage and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition for sale, lease or mortgage need be given, except as provided in RCW 11.28.240 hereof; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the purpose of determining whether it should order any of the property of the estate sold, leased or mortgaged. The absence of any allegation in the petition shall not deprive the court of jurisdiction to order said sale, lease or mortgage, and the court may, if it see fit, order such sale, lease or mortgage without any petition having been previously presented. [1965 c 145 § 11.56.030. Prior: 1937 c 28 § 3; 1917 c 156 § 124; RRS § 1494; prior: Code 1881 § 1493; 1854 p 285 § 103.]

**11.56.040 Order directing mortgage.** If the court should determine that it is necessary or proper, for any of the said purposes, to mortgage any or all of said property, it may make an order directing the personal representative to mortgage such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute and deliver his note or notes and secure the same by mortgage, and thereafter it shall be the duty of such personal representative to comply with such order. The personal representative shall not deliver any such note, mortgage or other evidence of indebtedness until he has first presented same to the court and obtained its approval of the form. Every mortgage so made and approved shall be effectual to mortgage and encumber all the right, title and interest of the said estate in the property described therein at the time of the death of the said decedent, or acquired by his estate, and no irregularity in the proceedings shall impair or invalidate any mortgage given under such order of the court and approved by it. [1965 c 145 § 11.56.040. Prior: 1917 c 156 § 125; RRS § 1495; prior: Code 1881 § 1494; 1854 p 285 § 104.]

**11.56.045 Order directing lease.** If the court should determine that it is necessary or proper, for any of the said purposes to lease any or all of said property, it may make an order directing the personal representative to lease such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute the lease and thereafter it shall be the duty of the personal representative to comply with such order. The personal representative shall not execute such lease until he has first presented the same to the court and obtained its approval of the form. [1965 c 145 § 11.56.045.]

**11.56.050 Order directing sale.** If the court should determine that it is necessary to sell any or all of the real estate for the purposes mentioned in this title, then it may make and cause to be entered an order directing



the personal representative to sell so much of the real estate as the court may determine necessary for the purposes aforesaid. Such order shall give a particular description of the property to be sold and the terms of such sale and shall provide whether such property shall be sold at public or private sale, or by negotiation. The court shall order sold that part of the real estate which is generally devised, rather than any part which may have been specifically devised, but the court may, if it appears necessary, sell any or all of the real estate so devised. After the giving of such order it shall be the duty of the personal representative to sell such real estate in accordance with the order of the court and as in this title provided with reference to the public or private sales of real estate. [1965 c 145 § 11.56.050. Prior: 1917 c 156 § 126; RRS § 1496; prior: Code 1881 § 1494; 1854 p 285 § 104.]

*Priority of sale as between realty and personalty: RCW 11.56.015.*

**11.56.060 Public sales—Notice.** When real property is directed to be sold by public sale, notice of the time and place of such sale shall be published in a legal newspaper of the county in which the estate is being administered, once each week for three successive weeks before such sale, in which notices the property ordered sold shall be described with proper certainty: *Provided*, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. At the time and place named in such notices for the said sale, the personal representative shall proceed to sell the property upon the terms and conditions ordered by the court, and to the highest and best bidder. All sales of real estate at public sale shall be made at the front door of the court house of the county in which the lands are, unless the court shall by order otherwise direct. [1965 c 145 § 11.56.060. Prior: 1917 c 156 § 127; RRS § 1497; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

**11.56.070 Postponement, adjournment of sale—Notice.** The personal representative, should he deem it for the best interests of all concerned, may postpone such sale to a time fixed but not to exceed twenty days, and such postponement shall be made by proclamation of the personal representative at the time and place first appointed for the sale; if there be an adjournment of such sale for more than three days, then it shall be the duty of the personal representative to cause a notice of such adjournment to be published in a legal newspaper in the county in which notice was published as provided in RCW 11.56.060, in addition to making such proclamation. [1965 c 145 § 11.56.070. Prior: 1917 c 156 § 128; RRS § 1498; prior: Code 1881 § 1505; 1854 p 287 § 115.]

**11.56.080 Private sales of realty—Notice—Bids.** When a sale of real property is ordered to be made at private sale, notice of the same must be published in a legal newspaper of the county in which the estate is being administered, once a week for at least two successive weeks before the day on or after which the sale is

to be made, in which the lands and tenements to be sold must be described with common certainty: *Provided*, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. The notice must state the day on or after which the sale will be made and the place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice and the sale must not be made before that day, but if made, must be made within twelve months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice or delivered to the personal representative personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order. [1965 c 145 § 11.56.080. Prior: 1917 c 156 § 129; RRS § 1499; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

**11.56.090 Minimum price—Private sale—Sale by negotiation—Reappraisal.** No sale of real estate at private sale or sale by negotiation shall be confirmed by the court unless the gross sum offered is at least ninety percent of the appraised value thereof, nor unless such real estate shall have been appraised within one year immediately prior to such sale. If it has not been so appraised, or if the court is satisfied that the appraisal is too high or too low, appraisers may be appointed, and they must make an appraisal thereof in the same manner as in the case of the original appraisal of the estate, and which appraisal may be made at any time before the sale or the confirmation thereof. [1965 c 145 § 11.56.090. Prior: 1917 c 156 § 130; RRS § 1500; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

**11.56.100 Confirmation of sale—Approval—Resale.** The personal representative making any sale of real estate, either at public or private sale, or sale by negotiation shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. In the case of a sale by negotiation the personal representative shall publish a notice in one issue of a legal newspaper of the county in which the estate is being administered; such notice shall include the legal description of the property sold, the selling price and the date after which the sale can be confirmed: *Provided*, That such confirmation date shall be at least ten days after such notice is published. At any time after the expiration of ten days from the publication of such notice, in the case of sale by negotiation, and at any time after the expiration of ten days from the filing of such return, in the case of public or

private sale the court may approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. But if the court shall be of the opinion that the proceedings were unfair, or that the sum obtained was disproportionate to the value of the property sold, or if made at private sale or sale by negotiation that it did not sell for at least ninety percent of the appraised value as in RCW 11.56.090 provided, and that a sum exceeding said bid by at least ten percent exclusive of the expense of a new sale, may be obtained, the court may refuse to approve or confirm such sale and may order a resale. On a resale, notice shall be given and the sale shall be conducted in all respects as though no previous sale had been made. [1965 c 145 § 11.56.100. Prior: 1917 c 156 § 131; RRS § 1501; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

#### 11.56.110 Offer of increased bid—Duty of court.

If, at any time before confirmation of any such sale, any person shall file with the clerk of the court a bid on such property in an amount not less than ten percent higher than the bid the acceptance of which was reported by the return of sale and shall deposit with the clerk not less than twenty percent of his bid in the form of cash, money order, cashier's check or certified check made payable to the clerk, to be forfeited to the estate unless such bidder complies with his bid, the bidder whose bid was accepted shall be informed of such increased bid by registered or certified mail addressed to such bidder at any address which may have been given by him at the time of making such bid. Such bidder then shall have a period of five days, not including holidays, in which to make and file a bid better than that of the subsequent bidder. After the expiration of such five-day period the court may refuse to confirm the sale reported in the return of sale and direct a sale to the person making the best bid then on file, indicating which is the best bid, and a sale made pursuant to such direction shall need no further confirmation. Instead of such a direction, the court, upon application of the personal representative, may direct the reception of sealed bids. Thereupon the personal representative shall mail notice by registered or certified mail to all those who have made bids on such property, informing them that sealed bids will be received by the clerk of the court within ten days. At the expiration of such period the personal representative, in the presence of the clerk of the court, shall open such bids as shall have been submitted to the clerk within the time stated in the notice (whether by previous bidders or not) and shall file a recommendation of the acceptance of the bid which he deems best in view of the requirements of the particular estate. The court may thereupon direct a sale to the bidder whose bid is deemed best by the court and a sale made pursuant to such direction shall need no confirmation: *Provided, however*, That the court shall consider the net realization to the estate in determining the best bid. [(i) 1967 ex.s. c 106 § 2. (ii) 1967 c 168 § 18; 1965 c 145 § 11.56.110. Prior: 1955 c 154 § 1; 1917 c 156 § 132; RRS § 1502.]

**Reviser's note:** RCW 11.56.110 was amended both by 1967 ex.s. c 106 § 2 and 1967 c 168 § 18 during the 1967 session. The language contained in both amendments is identical.

**Effective date—1967 ex.s. c 106:** (1) "The provisions of this act shall take effect on July 1, 1967." [1967 ex.s. c 106 § 5.] This applies to RCW 11.40.011 and 11.56.110.

(2) The effective date of 1967 c 168 § 18 is July 1, 1967, see note following RCW 11.02.070.

**11.56.115 Effect of confirmation.** No petition or allegation thereof for the sale of real estate shall be considered jurisdictional, and confirmation by the court of any sale shall be absolutely conclusive as to the regularity of all proceedings leading up to and including such sale, and no instrument of conveyance of real estate made after confirmation of sale by the court shall be open to attack upon any grounds whatsoever except for fraud, and the confirmation by the court of any such sale shall be conclusive proof that all statutory provisions and all orders of the court with reference to such sale have been complied with. [1965 c 145 § 11.56.115. Prior: 1917 c 156 § 134; RCW 11.56.130; RRS § 1504; prior: Code 1881 § 1510; 1854 p 287 § 120.]

*Real estate sold by executor, etc., limitation of action: RCW 4.16.070.*

#### 11.56.120 Conveyance after confirmation of sale.

Upon the confirmation of any such sale the court shall direct the personal representative to make, execute and deliver instruments conveying the title to the person to whom such property may be sold, and such instruments of conveyance shall be deemed to convey all the estate, rights and interests of the testator or intestate at the death of the deceased and any interest acquired by the estate. [1965 c 145 § 11.56.120. Prior: 1917 c 156 § 133; RRS § 1503; prior: Code 1881 § 1510; 1854 p 287 § 120.]

**11.56.140 Sale, lease or mortgage of realty to pay legacy.** When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with the debts and charges of administration, the personal representative, with the will annexed, may obtain an order to sell, mortgage or lease his real estate for that purpose in the same manner and upon the same terms and conditions as prescribed in this chapter in case of a sale, mortgage or lease for the payments of the debts. [1965 c 145 § 11.56.140. Prior: 1917 c 156 § 135; RRS § 1505; prior: 1895 c 157 § 10; Code 1881 § 1513; 1854 p 288 § 123.]

#### 11.56.150 Appropriation to pay debts and expenses.

If the provision made by the will or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this chapter. [1965 c 145 § 11.56.150. Prior: 1917 c 156 § 136; RRS § 1506; prior: 1891 c 155 § 32; Code 1881 § 1515; 1854 p 288 § 126.]

**Rules of court:** SPR 98.12W.

*Community property: Chapter 26.16 RCW.*

*Descent and distribution of real and personal estate: RCW 11.04.015.*

*Payment of claims where estate insufficient: RCW 11.76.150.*

*Priority of sale, etc., as between realty and personalty: RCW 11.56.015.*

**11.56.160 Liability of devisees and legatees for debts and expenses.** The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and allowances to the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it appear to the court necessary to carry into effect the intention of the testator. [1965 c 145 § 11.56.160. Prior: 1917 c 156 § 137; RRS § 1507; prior: Code 1881 § 1517; 1854 p 288 § 127.]

**11.56.170 Contribution among devisees and legatees.** When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute, according to their respective interests, to any devisee or legatee from whom the estate devised to him may be taken for the payments of the debts or expenses; and the court, when distribution is made, shall by decree for that purpose, settle the amount of the several liabilities and decree how much each person shall contribute. [1965 c 145 § 11.56.170. Prior: 1917 c 156 § 138; RRS § 1508; prior: Code 1881 § 1518; 1854 p 289 § 128.]

**11.56.180 Sale of decedent's contract interest in land.** If the deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands under such contract may be sold on the application of his personal representative in the same manner as if he died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this title in respect to lands of which he died seized, except as hereinafter provided. [1965 c 145 § 11.56.180. Prior: 1917 c 156 § 139; RRS § 1509; prior: Code 1881 § 1519; 1854 p 289 § 129.]

*Performance of decedent's contracts: Chapter 11.60 RCW.*

*Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.*

**11.56.210 Assignment of decedent's contract.** Upon the confirmation of such sale, the personal representative shall execute to the purchaser an assignment of the contract and deed, which shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living. [1965 c 145 § 11.56.210. Prior: 1917 c 156 § 142; RRS § 1512; prior: Code 1881 § 1522; 1854 p 289 § 132.]

**11.56.220 Redemption of decedent's mortgaged estate.** If any person die having mortgaged any real or personal estate, and shall not have devised the same, or provided for any redemption thereof by will, the court,

upon the application of any person interested, may order the personal representative to redeem the estate out of the assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate and not injurious to creditors. [1965 c 145 § 11.56.220. Prior: 1917 c 156 § 143; RRS § 1513; prior: Code 1881 § 1523; 1854 p 289 § 133.]

**11.56.230 Sale or mortgage to effect redemption.** If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell or mortgage other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him to redeem the property so mortgaged, the court may order the sale or mortgaging of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court. [1965 c 145 § 11.56.230. Prior: 1917 c 156 § 144; RRS § 1514; prior: 1895 c 157 § 11; 1888 p 185 § 1.]

**11.56.240 Sale of mortgaged property if redemption inexpedient.** If such redemption be not deemed expedient, the court shall order such property to be sold at public or private sale, which sale shall be with the same notice and conducted in the same manner as required in other cases of real estate or personal property provided for in this title, and shall be sold subject to such mortgage, and the personal representative shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased had in the property, and the purchase money, after paying the expenses of the sale, shall be applied to the residue in due course of administration. [1965 c 145 § 11.56.240. Prior: 1917 c 156 § 145; RRS § 1515; prior: Code 1881 § 1524; 1873 p 296 § 211; 1854 p 290 § 134.]

**11.56.250 Sales directed by will.** When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and without any notice, and it shall not be necessary under such circumstances to make any application to the court with reference to such sales or have the same confirmed by the court. [1965 c 145 § 11.56.250. Prior: 1917 c 156 § 146; RRS § 1516; prior: Code 1881 § 1527.]

**11.56.265 Brokers fee and closing expenses—Sale, mortgage or lease.** In connection with the sale, mortgage or lease of property, the court may authorize the personal representative to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection therewith. [1965 c 145 § 11.56.265.]

*Allowance of necessary expenses to personal representative: RCW 11.48.050.*

**11.56.280 Borrowing on general credit of estate—Petition—Notice—Hearing.** Whenever it shall appear to the satisfaction of the court that money is needed to pay debts of the estate, expenses of administration, inheritance tax, or estate tax, the court may by order authorize the personal representative to borrow such money, on the general credit of the estate, as appears to the court necessary for the purposes aforesaid. The time for repayment, rate of interest and form of note authorized shall be as specified by the court in its order. The money borrowed pursuant thereto shall be an obligation of the estate repayable with the same priority as unsecured claims filed against the estate. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and tax obligations and such other things as will tend to assist the court in determining the necessity for the borrowing and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition need be given, except to persons who have requested notice under the provisions of RCW 11.28-.240; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the foregoing purpose. The absence of any allegation in the petition shall not deprive the court of jurisdiction to authorize such borrowing. [1965 c 145 § 11.56.280.]

*Order of payment of debts: RCW 11.76.110.*

*Powers of executor under nonintervention will: RCW 11.68.040.*

### Chapter 11.60

#### PERFORMANCE OF DECEDENT'S CONTRACTS

##### Sections

- 11.60.010 Order for performance on application of personal representative.
- 11.60.020 Petition, notice and hearing when personal representative fails to make application.
- 11.60.030 Hearing.
- 11.60.040 Conveyance of real property—Effect.
- 11.60.060 Procedure on death of person entitled to performance.

*Evidence, transaction with person since deceased: RCW 5.60.030.*

*Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.*

*Sale or assignment of decedent's contract interest in land: RCW 11.56.180, 11.56.210.*

**11.60.010 Order for performance on application of personal representative.** If any person, who is bound by contract, in writing, shall die before performing said contract, the superior court of the county in which the estate is being administered, may upon application of the personal representative, without notice, make an order authorizing and directing the personal representative to perform such contract. [1965 c 145 § 11.60.010. Prior: 1917 c 156 § 188; RRS § 1558; prior: 1891 p 390 § 40; Code 1881 § 623; 1877 p 130 § 626; 1854 p 292 § 150.]

*Guardianship, performance of contracts: RCW 11.92.130.*

**11.60.020 Petition, notice and hearing when personal representative fails to make application.** If the personal representative fails to make such application, then any person claiming to be entitled to such performance under such contract, may present a petition setting forth the facts upon which such claim is predicated. Notice of hearing shall be in accordance with the provisions of \*RCW 11.16.081. [1965 c 145 § 11.60.020. Prior: 1917 c 156 § 189; RRS § 1559; prior: 1891 c 155 § 41; Code 1881 § 694; 1877 p 130 § 627; 1854 p 292 § 151.]

*\*Reviser's note: RCW 11.16.081 was repealed by section 5, chapter 70, Laws of 1969.*

*Actions for recovery of property and on contract: RCW 11.48.090.*

**11.60.030 Hearing.** At the time appointed for such hearing, or at such other time as the same may be adjourned to, upon proof of service of the notice as provided in \*RCW 11.16.081, the court shall proceed to a hearing and determine the matter. [1965 c 145 § 11.60.030. Prior: 1917 c 156 § 190; RRS § 1560; prior: 1891 c 155 § 42; Code 1881 § 625; 1877 p 130 § 628; 1854 p 293 § 152.]

*\*Reviser's note: RCW 11.16.081 was repealed by section 5, chapter 70, Laws of 1969.*

**11.60.040 Conveyance of real property—Effect.** In the case of real property, a conveyance executed under the provisions of this title shall so refer to the order authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of such order shall pass to the grantee all the estate, right, title and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself were still living and executed the conveyance in pursuance of such contract. [1965 c 145 § 11.60.040. Prior: 1917 c 156 § 191; RRS § 1561; prior: Code 1881 § 626; 1877 p 130 § 629; 1854 p 293 § 153.]

**11.60.060 Procedure on death of person entitled to performance.** If the person entitled to performance shall die before the commencement of the proceedings according to the provisions of this title or before the completion of performance, any person who would have been entitled to the performance under him, as heir, devisee, or otherwise, in case the performance had been made according to the terms of the contract, or the personal representative of such deceased person, for the benefit of persons entitled, may commence such proceedings, or prosecute the same if already commenced; and the performance shall inure to the persons who would have been entitled to it, or to the personal representative for their benefit. [1965 c 145 § 11.60.060. Prior: 1917 c 156 § 193; RRS § 1563; prior: 1891 c 155 § 47; Code 1881 § 532; 1877 p 132 § 635; 1854 p 294 § 159.]

## Chapter 11.62

## ESTATES UNDER \$10,000—DISPOSITION OF DEBTS, PERSONAL PROPERTY TAXES, ETC. BY AFFIDAVIT

## Sections

- 11.62.010 Disposition of debts owed decedent, personal property, instruments evidencing debt, obligations, stock or choses in action by affidavit—Contents—Payment or delivery to successor—Inheritance taxes—"Successor" defined.
- 11.62.020 Effect of affidavit—Discharge and release of transferor—Refusal to pay or deliver—Procedure—Conflicting affidavits—Accountability.

**11.62.010 Disposition of debts owed decedent, personal property, instruments evidencing debt, obligations, stock or choses in action by affidavit—Contents—Payment or delivery to successor—Inheritance taxes—"Successor" defined.** (1) At any time after forty days from the date of the decedent's death, any person indebted to the decedent or having possession of tangible personal property or any instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent, which property is subject to probate, shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon receipt of an affidavit made by the successor stating:

- (a) The successor's name and address;
- (b) That the decedent was a resident of the state of Washington on the date of his death;
- (c) That the value of the total estate of the decedent subject to probate, wherever located, less liens and encumbrances, does not exceed ten thousand dollars;
- (d) That forty days have elapsed since the death of the decedent;
- (e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;
- (f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;
- (g) That the claiming successor has mailed notice identifying his claim to all other successors of the decedent and at least ten days have elapsed since said mailing, and the claiming successor is personally, or with the written authority of all other successors of the decedent, entitled to full payment or delivery of the property; and

(h) That the claiming successor has mailed to the inheritance tax division of the state department of revenue a notification of his claim in such form as the department of revenue may prescribe, and that at least ten days have elapsed since said mailing; and

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1) of this section;

(3) Upon receipt of notification from the inheritance tax division of the state department of revenue that an inheritance tax report is requested, the holder of any property subject to claim by a successor hereunder shall

withhold payment, delivery, transfer or issuance of such property until provided with an inheritance tax release.

(4) The terms "successor" and "successors" as used in this section and in RCW 11.62.020 shall mean that person or those persons, other than creditors, who are entitled to the property of the decedent under his will or the laws of intestate succession as contained in this title. [1974 1st ex.s. c 117 § 4.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.62.020 Effect of affidavit—Discharge and release of transferor—Refusal to pay or deliver—Procedure—Conflicting affidavits—Accountability.** The person paying, delivering, or transferring personal property or the evidence thereof pursuant to RCW 11.62.010 is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit or to the payment of any inheritance tax liability. If any person to whom an affidavit is delivered refuses to pay, deliver, or transfer any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto.

If more than one affidavit is delivered with reference to the same personal property, the person to whom delivered may pay, deliver, transfer, or issue any personal property or evidence thereof in response to the first affidavit received, or alternately implead the money or other personal property into court for payment over to the person entitled thereto. Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right. [1974 1st ex.s. c 117 § 5.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

Chapter 11.64  
PARTNERSHIP PROPERTY

## Sections

- 11.64.002 Inventory and appraisal on death of partner—Filing.
- 11.64.008 Surviving partner may continue in possession—Accounting.
- 11.64.016 Security may be required.
- 11.64.022 Failure to file inventory, appraisal, etc.—Show cause—Receiver.
- 11.64.030 Survivor may purchase deceased's interest—Protection against partnership liabilities.
- 11.64.040 Surviving partner may operate under agreement with estate—Termination.

*Dissolution and winding up of partnership: RCW 25.04.290–25.04.430.*

*Property rights of a partner: RCW 25.04.240–25.04.280.*

*Relations of partners to one another: RCW 25.04.180–25.04.230.*

*Rights of estate of deceased partner when business is continued: RCW 25.04.420.*

**11.64.002 Inventory and appraisal on death of partner—Filing.** Within thirty days after the death of a partner the surviving partner or partners shall file a verified inventory of the assets of the partnership in the superior court in which letters testamentary or of administration are issued on the estate of the decedent, or, if no letters are issued, in the court of the county of which the decedent was resident at the time of his death. The inventory shall state the value of the assets as shown by the books of the partnership and a list of the liabilities of the partnership. If letters testamentary or of administration have been issued on the estate of the decedent, the surviving partner or partners shall cause the assets of the partnership to be appraised in like manner as the individual property of a deceased person, which appraisal shall include the value of the assets of the partnership and a list of the liabilities. The appraisers appointed by the court under RCW 11.44.055 to appraise the property of the deceased partner may appraise the partnership property, and the surviving partner or partners shall file the inventory and appraisal with the court in which the estate of the deceased partner is being administered: *Provided*, That if the surviving partner or partners cannot prepare an inventory within thirty days after the death of the decedent, the court may, on application made within said thirty day period and for good cause shown, grant an extension of time not to exceed an additional three months, within which time such inventory may be filed. [1965 c 145 § 11.64.002. Prior: 1951 c 197 § 1; prior: (i) 1917 c 156 § 88; RRS § 1458. (ii) 1917 c 156 § 91; RRS § 1461.]

*Inventory of estate to identify decedent's share in partnership: RCW 11.44.015(6).*

*Right to wind up partnership: RCW 25.04.370.*

**11.64.008 Surviving partner may continue in possession—Accounting.** The surviving partner or partners may continue in possession of the partnership estate, pay its debts, and settle its business, and shall account to the personal representative of the decedent and shall pay over such balances as may, from time to time, be payable to him. Upon the verified petition of the personal representative, or on its own motion, the court, whenever it appears necessary, may order the surviving partner or partners to account to said court. [1965 c 145 § 11.64.008. Prior: 1951 c 197 § 2.]

**11.64.016 Security may be required.** If the surviving partner or partners commit waste, or if it appears to the court that it is for the best interest of the estate of the decedent, such court may order the surviving partner or partners to give security for the faithful settlement of the partnership affairs and the payment to the personal representative of any amount due the estate. [1965 c 145 § 11.64.016. Prior: 1951 c 197 § 3.]

**11.64.022 Failure to file inventory, appraisal, etc.—Show cause—Receiver.** If the surviving partner or partners fail or refuse to file the inventory, list of liabilities or appraisal, or if it appears proper to order the surviving partner or partners to account to the court or

to file a bond, said court shall order a citation to issue requiring the surviving partner or partners to appear and show cause why they have not filed an inventory, list of liabilities or appraisal or why they should not account to the court or file a bond. The citation shall be served not less than ten days before the return day designated therein. If the surviving partner or partners neglect or refuse to file an inventory, list of liabilities or appraisal, or fail to account to the court or to file a bond, after they have been directed to do so, they may be punished for a contempt or the court may commit them to jail until they comply with the order of the court. Where the surviving partner or partners fail to file a bond after being ordered to do so by the court, the court may also appoint a receiver of the partnership estate with like powers and duties of receivers in equity, and order the costs and expenses of the proceedings to be paid out of the partnership estate or out of the estate of the decedent, or by the surviving partner or partners personally, or partly by each of the parties. [1965 c 145 § 11.64.022. Prior: 1951 c 197 § 4.]

**11.64.030 Survivor may purchase deceased's interest—Protection against partnership liabilities.** The surviving partner or the surviving partners jointly, shall have the right at any time to petition the court to purchase the interests of a deceased partner in the partnership. Upon such petition being presented the court shall, in such manner as it sees fit, learn and by order fix the value of the interest of the deceased over and above all partnership debts and obligations, and the terms and conditions upon which the surviving partner or partners may purchase, and thereafter the surviving partner or partners shall have the preference right for such length of time as the court may fix, to purchase the interest of the deceased partner at the price and upon the terms and conditions fixed by the court. If any such surviving partner be also the personal representative of the estate of the deceased partner, such fact shall not affect his right to purchase, or to join with the other surviving partners to purchase such interest in the manner hereinbefore provided.

The court shall make such orders in connection with such sale as it deems proper or necessary to protect the estate of the deceased against any liability for partnership debts or obligations. [1965 c 145 § 11.64.030. Prior: 1951 c 197 § 5; prior: 1917 c 156 § 89; 1859 p 186 §§ 120-130; 1854 p 274 §§ 46-53; RRS § 1459.]

**11.64.040 Surviving partner may operate under agreement with estate—Termination.** The court may, in instances where it is deemed advisable, authorize and direct the personal representative of the estate of a deceased partner to enter into an agreement with the surviving partner or partners under which the surviving partner or partners may continue to operate any going business of the former partnership until the further order of the court. The court may, in its discretion, revoke such authority and direction and thereby terminate such agreement at any time by further order, entered upon the application of the personal representative or

the surviving partner or partners or any interested person or on its own motion. [1965 c 145 § 11.64.040. Prior: 1951 c 197 § 6; prior: 1917 c 156 § 90; 1859 p 186 §§ 120-130; 1854 p 274 §§ 46-53; RRS § 1460.]

### Chapter 11.66 SOCIAL SECURITY BENEFITS

#### Sections

11.66.010 Social security benefits—Payment to survivors or department of institutions—Effect.

**11.66.010 Social security benefits—Payment to survivors or department of institutions—Effect.** (1) If not less than thirty days after the death of an individual entitled at the time of death to a monthly benefit or benefits under Title II of the Social Security Act, all or part of the amount of such benefit or benefits, not in excess of one thousand dollars, is paid by the United States to (a) the surviving spouse, (b) one or more of the deceased's children, or descendants of his deceased children, (c) the director of the department of institutions if the decedent was a resident of a state institution at the date of death and liable for the cost of his care in an amount at least as large as the amount of such benefits, (d) the deceased's father or mother, or (e) the deceased's brother or sister, preference being given in the order named if more than one request for payment shall have been made by or for such individuals, such payment shall be deemed to be a payment to the legal representative of the decedent and shall constitute a full discharge and release from any further claim for such payment to the same extent as if such payment had been made to an executor or administrator of the decedent's estate.

(2) The provisions of subsection (1) hereof shall apply only if an affidavit has been made and filed with the United States Department of Health, Education, and Welfare by the surviving spouse or other relative by whom or on whose behalf request for payment is made and such affidavit shows (a) the date of death of the deceased, (b) the relationship of the affiant to the deceased, (c) that no executor or administrator for the deceased has qualified or been appointed, nor to the affiant's knowledge is administration of the deceased's estate contemplated, and (d) that, to the affiant's knowledge, there exists at the time of the filing of such affidavit, no relative of a closer degree of kindred to the deceased than the affiant: *Provided*, That the affidavit filed by the director of the department of institutions shall meet the requirements of parts (a) and (c) of this subsection and, in addition, show that the decedent left no known surviving spouse or children and died while a resident of a state institution at the date of death and liable for the cost of his care in an amount at least as large as the amount of such benefits. [1967 c 175 § 2.]

**Effective date—1967 c 175:** "This 1967 amendatory act shall take effect and be in force on and after the first day of July, 1967, in conformity with the terms and provisions of section 11.99.010, chapter 145, Laws of 1965 and RCW 11.99.010." [1967 c 175 § 3.] This applies to RCW 11.66.010.

**Disposition of property of deceased inmate of state institution:** RCW 11.08.101, 11.08.111, 11.08.120.

### Chapter 11.68 SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION

#### Sections

11.68.010 Settlement without court intervention—Solvency—Order of solvency—Notice.  
11.68.020 Presumption of nonintervention powers where personal representative named in will.  
11.68.030 Nonintervention powers—Order of solvency—Bond.  
11.68.040 Application for nonintervention powers—Intestacy or personal representative not named—Notice—Requirements—Hearing on petition.  
11.68.050 Objections to granting of nonintervention powers—Restrictions on powers—No objections.  
11.68.060 Death, resignation or disablement of personal representative—Successor to administer nonintervention powers.  
11.68.070 Procedure when personal representative recant to trust or subject to removal.  
11.68.080 Order of solvency—Vacation or restriction.  
11.68.090 Powers of personal representative under nonintervention will—Scope—Presumption of necessity.  
11.68.100 Closing of estate—Alternative decrees—Notice—Hearing—Fees.  
11.68.110 Declaration of completion of probate—Contents—Filing—Form—Notice—Waiver of notice.  
11.68.120 Nonintervention powers not deemed waived by obtaining order or decree.

*Waiver of bond by will:* RCW 11.28.200.

**11.68.010 Settlement without court intervention—Solvency—Order of solvency—Notice.** Subject to the provisions of this chapter, if the estate of a decedent, who died either testate or intestate, is solvent, and if the personal representative is other than a creditor of the estate not designated as executor in the decedent's will, such estate shall be managed and settled without the intervention of the court; the fact of solvency shall be established by the entry of an order of solvency. An order of solvency may be entered at the time of the appointment of the personal representative or at any time thereafter where it appears to the court by the petition of the personal representative, or the inventory filed, and/or other proof submitted, that the estate of the decedent is solvent, and that notice of the application for an order of solvency has been given to those persons entitled thereto when required by RCW 11.68.040 as now or hereafter amended. [1974 1st ex.s. c 117 § 13; 1969 c 19 § 1; 1965 c 145 § 11.68.010. Prior: 1955 c 205 § 5; prior: 1917 c 156 § 92, part; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1462, part.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

*Distribution of estates to minors:* RCW 11.76.095.

*Duty of personal representative to notify department of revenue of administration:* RCW 82.32.240.

*Inventory:* RCW 11.44.015.

*List of heirs to be filed with clerk:* RCW 83.36.040.

*Notice of appointment as personal representative:* RCW 11.28.237.

*Notice of hearing on final report and petition for distribution:* RCW 11.76.040.

*Notice to creditors:* RCW 11.40.010.

*Request for special notice in proceedings in probate:* RCW 11.28.240.



**11.68.020 Presumption of nonintervention powers where personal representative named in will.** Unless court supervision of an estate shall be specifically required under the terms and provisions of a will, a decedent shall be deemed to have intended any and all personal representatives named in his will to have the power to administer his estate without the intervention of court, and any personal representative or personal representatives named in the decedent's will shall acquire nonintervention powers without prior notice, upon meeting the requirements of RCW 11.68.010 as now or hereafter amended. [1974 1st ex.s. c 117 § 14; 1965 c 145 § 11.68.020. Prior: 1955 c 205 § 6; prior: 1917 c 156 § 92, part; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1462, part.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.68.030 Nonintervention powers—Order of solvency—Bond.** Subject to giving prior notice when required under RCW 11.68.040 as now or hereafter amended and the entry of an order of solvency, the personal representative, other than a creditor, of an estate of a decedent who died intestate or the personal representative, other than a creditor, with the will annexed of the estate of a decedent who died testate shall [have] the power to administer the estate without further intervention of court after the entry of an order of solvency and furnishing bond when required. [1974 1st ex.s. c 117 § 15; 1965 c 145 § 11.68.030. Prior: 1955 c 205 § 7; prior: 1917 c 156 § 92, part; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1462, part.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**Revocation of letters—Causes:** RCW 11.28.250.

**11.68.040 Application for nonintervention powers—Intestacy or personal representative not named—Notice—Requirements—Hearing on petition.** If the decedent shall have died intestate, or the petitioning personal representative is not named in the will as such, and in either case the petitioner wishes to acquire nonintervention powers, the personal representative shall, after filing the petition for order of solvency, give notice of his intention to apply to the court for nonintervention powers to all heirs, devisees, legatees of the decedent, and all parties who have requested notice under RCW 11.28.240, who have not, in writing, either waived notice of the hearing or consented to the entry of an order of solvency; said notice shall be given at least ten days prior to the date fixed by the personal representative for the hearing on his petition for an order of solvency: *Provided*, That no prior notice of said hearing shall be required when the personal representative is:

- (1) The surviving spouse of the decedent and the decedent left no issue of a prior marriage; or
- (2) A bank or trust company authorized to do trust business in the state of Washington.

The notice required by this section shall be sent by regular mail and proof of mailing of said notice shall be by affidavit filed in the cause. Said notice shall contain the name of the decedent's estate, the probate cause number, the name and address of the personal representative, and shall state in substance as follows:

(a) The personal representative has petitioned the superior court of \_\_\_\_\_ county, state of Washington, for the entry of an order of solvency and a hearing on said petition will be held on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_M.;

(b) The petition for order of solvency has been filed with said court;

(c) Upon the entry of an order of solvency by the court, the personal representative will be entitled to administer and close the decedent's estate without further court intervention or supervision;

(d) Any heir, legatee, or devisee shall have the right to appear at the time of the hearing on the petition for an order of solvency to object to the granting of nonintervention powers to the personal representative.

If no notice is required, or all heirs, legatees, and devisees have either waived notice of said hearing or consented to the entry of an order of solvency as provided in this section, the court may hear the petition for an order of solvency at any time. [1974 1st ex.s. c 117 § 16; 1965 c 145 § 11.68.040. Prior: 1955 c 205 § 9; prior: 1917 c 156 § 93; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1463.]

**Rules of court:** SPR 98.04W.

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.68.050 Objections to granting of nonintervention powers—Restrictions on powers—No objections.** If at the time set for the hearing upon the petition for the entry of an order of solvency, any party entitled to notice under the provisions of RCW 11.68.040 as now or hereafter amended, shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider said objections, if any, and the entry of an order of solvency shall be discretionary with the court upon being satisfied by proof as required in RCW 11.68.010 as now or hereafter amended. Unless unrestricted nonintervention powers are directed by the will of the decedent, the court may restrict the powers of the personal representative in such manner as the court determines and shall thereupon restrict the powers as ordered. If no heir, legatee, or devisee of the decedent shall appear at the time of the hearing to object to the entry of an order of solvency, the court shall enter an order of solvency upon being satisfied by proof as required in RCW 11.68.010 as now or hereafter amended. [1974 1st ex.s. c 117 § 17.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.68.060 Death, resignation or disablement of personal representative—Successor to administer nonintervention powers.** If, after the entry of an order of

solvency, any personal representative of the estate of the decedent shall die, resign, or otherwise become disabled from any cause from acting as the nonintervention personal representative, the successor personal representative, other than a creditor not designated as executor in the decedent's will, shall administer the estate of the decedent without the intervention of court after notice and hearing as required by RCW 11.68.040 and 11.68.050, unless at the time of said hearing objections to the granting of nonintervention powers to such successor personal representative shall be made by an heir, legatee, devisee, or creditor of the decedent, and unless the court, after hearing said objections shall refuse to grant nonintervention powers to such successor personal representative. If no heir, legatee, devisee, or creditor of the decedent shall appear at the time of the hearing to object to the granting of nonintervention powers to such successor personal representative, the court shall enter an order granting nonintervention powers to the successor personal representative. [1974 1st ex.s. c 117 § 18.]

**Application, construction—Severability—Effective date—1974**  
1st ex.s. c 117: See RCW 11.02.080 and notes following.

**11.68.070 Procedure when personal representative recreant to trust or subject to removal.** If any personal representative who has been granted nonintervention powers fails to execute his trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of any unpaid creditor of the estate who has filed a claim or any heir, devisee, legatee, or of any person on behalf of any incompetent heir, devisee, or legatee, such petition being supported by affidavit which makes a prima facie showing of cause for removal or restriction of powers, the court shall cite such personal representative to appear before it, and if, upon hearing of the petition it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, then, in the discretion of the court said personal representative may be removed and a successor appointed with such powers as the court may determine, and in the event the court shall restrict the powers of the personal representative in any manner, it shall endorse the words "Powers restricted" upon the original order of solvency together with the date of said endorsement, and in all such cases the cost of the citation, hearing, and reasonable attorney's fees may be awarded as the court determines. [1974 1st ex.s. c 117 § 19.]

**Application, construction—Severability—Effective date—1974**  
1st ex.s. c 117: See RCW 11.02.080 and notes following.

**11.68.080 Order of solvency—Vacation or restriction.** After such notice as the court may require, the order of solvency shall be vacated or restricted upon the petition of any personal representative, heir, legatee, devisee, or creditor, if supported by proof satisfactory to the court that said estate has become insolvent.

If, after hearing, the court shall vacate the prior order of solvency, the court shall endorse the term "Vacated"

or "Powers restricted" upon the original order of solvency together with the date of said endorsement. [1974 1st ex.s. c 117 § 20.]

**Application, construction—Severability—Effective date—1974**  
1st ex.s. c 117: See RCW 11.02.080 and notes following.

**11.68.090 Powers of personal representative under nonintervention will—Scope—Presumption of necessity.** Any personal representative acting under nonintervention powers, may mortgage, encumber, lease, sell, exchange, and convey the real and personal property of the decedent, and borrow money on the general credit of the estate, without an order of court for that purpose and without notice, approval or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Any other party to any such transaction and his successors in interest shall be entitled to have it conclusively presumed that such transaction is necessary for the administration of the decedent's estate. [1974 1st ex.s. c 117 § 21.]

**Application, construction—Severability—Effective date—1974**  
1st ex.s. c 117: See RCW 11.02.080 and notes following.

**11.68.100 Closing of estate—Alternative decrees—Notice—Hearing—Fees.** (1) When the estate is ready to be closed, the court, upon application by the personal representative who has nonintervention powers, shall have the authority and it shall be its duty, to make and cause to be entered a decree which either:

(a) Finds and adjudges that all approved claims of the decedent have been paid, finds and adjudges the heirs of the decedent or those persons entitled to take under his will, and distribute the property of the decedent to the persons entitled thereto; or

(b) Approves the accounting of the personal representative and settles the estate of the decedent in the manner provided for in the administration of those estates in which the personal representative has not acquired nonintervention powers.

(2) Either decree provided for in this section shall be made after notice given as provided for in the settlement of estates by a personal representative who has not acquired nonintervention powers. The petition for either decree provided for in this section shall state the fees paid or proposed to be paid to the personal representative, his attorneys, accountants, and appraisers, and any heir, devisee, or legatee whose interest in the assets of a decedent's estate would be reduced by the amount of said fee shall receive a copy of said petition with the notice of hearing thereon; at the request of the personal representative or any said heir, devisee, or legatee, the court shall, at the time of the hearing on either petition, determine the reasonableness of said fees. The criteria for and reasonable range of fees reviewed shall be as established by court rules issued by the state supreme court. The court shall take into consideration all criteria forming the basis for the determination of the amount of such fees as contained in the code of professional responsibility; in determining the reasonableness

of the fees charged by any personal representative, accountants, and appraisers the court shall take into consideration the criteria forming the basis for the determination of attorney's fees, to the extent applicable, and any other factors which the court determines to be relevant in the determination of the amount of fees to be paid to such personal representative. [1974 1st ex.s. c 117 § 22.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.68.110 Declaration of completion of probate—Contents—Filing—Form—Notice—Waiver of notice.** If a personal representative who has acquired nonintervention powers shall not apply to the court for either final decree provided for in RCW 11.68.100, the personal representative shall, when the administration of the estate has been completed, file a declaration to that effect, which declaration shall state as follows:

(1) The date of the decedent's death, and his residence at the time of death, whether or not the decedent died testate or intestate, and if testate, the date of his last will and testament and the date of the order admitting said will to probate;

(2) That each creditor's claim which was justly due and properly presented as required by law has been paid or otherwise disposed of by agreement with the creditor, and that the amount of state inheritance or federal estate tax due as the result of the decedent's death has been determined, settled, and paid;

(3) The personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed;

(4) If the decedent died intestate, the names, addresses (if known), and relationship of each heir of the decedent, together with the distributive share of each said heir;

(5) The amount of fees paid or to be paid to each of the following: (a) Personal representative or representatives, (b) attorney or attorneys, (c) appraiser or appraisers, and (d) accountant or accountants. That the personal representative believes said fees to be reasonable and does not intend to obtain court approval of the amount of said fees or to submit an estate accounting to the court for approval.

Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent shall petition the court either for an order requiring the personal representative to obtain court approval of the amount of fees paid or to be paid to the personal representative, his attorneys, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal representative will be discharged and his powers cease thirty days after the filing of said declaration of completion of probate, and said declaration of completion of probate shall, at said time, be the equivalent of the entry of a decree of distribution in accordance with the provisions of chapter 11.76 RCW for all legal intents and purposes.

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Within five days of the date of the filing of the declaration of completion, the personal representative or his attorney shall mail a copy of said declaration of completion to each heir, legatee, or devisee of the decedent (who has not waived notice of said filing, in writing, filed in the cause) together with a notice which shall be as follows:

**CAPTION                      NOTICE OF FILING OF  
OF                              DECLARATION OF COMPLETION  
CASE                            OF PROBATE**

NOTICE IS HEREBY GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court of [on] the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_; unless you shall file a petition in the above-entitled court requesting the court to approve the reasonableness of said fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or his attorney, within thirty days after the date of said filing, the amount of fees paid or to be paid will be deemed reasonable, the acts of the personal representative will be deemed approved, and the Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW.

If you file and serve a petition with [within] the period specified, the undersigned will request the court to fix a time and place for the hearing of said petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on said petition.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

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Personal Representative

If all heirs, devisees, and legatees of the decedent shall waive, in writing, the notice required by this section, the personal representative shall be discharged and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. [1974 1st ex.s. c 117 § 23.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.68.120 Nonintervention powers not deemed waived by obtaining order or decree.** A personal representative who has acquired nonintervention powers in accordance with this chapter shall not be deemed to have waived his nonintervention powers by obtaining any order or decree during the course of his administration of the estate. [1974 1st ex.s. c 117 § 24.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**Chapter 11.72  
DISTRIBUTION BEFORE SETTLEMENT**

| Sections  |   |
|-----------|---|
| 11.72.002 | Delivery of specific property to distributee before final decree. |
| 11.72.006 | Partial distribution—Distribution of part of estate.              |

**11.72.002 Delivery of specific property to distributee before final decree.** Upon application of the personal representative, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee who consents to it, possession of any specific real or personal property to which he is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him to return such property to the personal representative, if it is for the best interests of the estate. The court may require the distributee to give security for such return. [1965 c 145 § 11.72.002.]

**11.72.006 Partial distribution—Distribution of part of estate.** After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons, as the court may direct. Such distribution shall be as conclusive as a decree of final distribution with respect to the estate distributed except to the extent that other distributees and claimants are deprived of the fair share or amount which they would otherwise receive on final distribution. Before a partial distribution is so decreed, the court may require that security be given for the return of the property so distributed to the extent necessary to satisfy any distributees and claimants who may be prejudiced as aforesaid by the distribution. In the event of a request for a partial distribution asked by a person other than the personal representative of the estate, the costs of such proceedings and a reasonable allowance for attorneys fees shall be assessed against the applicant or applicants for the benefit of the estate. [1965 c 145 § 11.72.006. Former RCW sections, RCW 11.72.010 through 11.72.070.]

## Chapter 11.76

### SETTLEMENT OF ESTATES

#### Sections

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| 11.76.247 | When court retains jurisdiction after entry of decree of distribution. |
| 11.76.250 | Letters after final settlement.  |

*Destruction of receipts for expenses under probate proceedings: RCW 36.23.065.*

*Inheritance and gift taxes: Title 83 RCW.*

**11.76.010 Report of personal representative—Contents—Interim reports.** Not less frequently than annually from the date of qualification, unless a final report has theretofore been rendered, the personal representative shall make, verify by his oath, and file with the clerk of the court a report of the affairs of the estate. Such report shall contain a statement of the claims filed and allowed and all those rejected, and if it be necessary to sell, mortgage, lease or exchange any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family, he may in such report set out the facts showing such necessity and ask for such sale, mortgage, lease or exchange; such report shall likewise state the amount of property, real and personal, which has come into his hands, and give a detailed statement of all sums collected by him, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him done or which should be done. Such personal representative may at any time, however, make, verify, and file any reports which in his judgment would be proper or which the court may order to be made. [1965 c 145 § 11.76.010. Prior: 1917 c 156 § 159; RRS § 1529; prior: Code 1881 § 1544; 1854 p 296 § 167.]

**11.76.020 Notice of hearing—Settlement of report.** It shall not be necessary for the personal representative to give any notice of the hearing of any report prior to the final report, except as in RCW 11.28.240 provided, but the court may require notice of the hearing of any such report. [1965 c 145 § 11.76.020. Prior: 1917 c 156 § 160; RRS § 1530.]

**11.76.030 Final report and petition for distribution—Contents.** When the estate shall be ready to be closed, such personal representative shall make, verify and file with the court his final report and petition for distribution. Such final report and petition shall, among other things, show that the estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the personal representative since his previous report, and debts paid, and generally the condition of the estate at that time. It shall likewise set out the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will, and the names and addresses, as nearly as may

be, of all the heirs who may be entitled to share in such estate, and shall give a particular description of all the property of the estate remaining undisposed of, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative. If the personal representative has been discharged without having legally closed the estate, without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective. [1965 c 145 § 11.76.030. Prior: 1917 c 156 § 161; RRS § 1531; prior: 1891 c 155 § 34; Code 1881 § 1556; 1873 p 305 § 251; 1854 p 297 § 178.]

*Closure and discharge where obligations and awards equal value of estate: RCW 11.52.050.*

*Discharge of personal representative for cause: RCW 11.28.160, 11.28.250.*

#### **11.76.040 Time and place of hearing—Notice.**

When such final report and petition for distribution, or either, has been filed, the court, or the clerk of the court, shall fix a day for hearing it which must be at least twenty days subsequent to the day of the publication as hereinafter provided. Notice of the time and place fixed for the hearing shall be given by the personal representative by publishing a notice thereof in a legal newspaper published in the county for one publication at least twenty days preceding the time fixed for the hearing. It shall state in substance that a final report and petition for distribution have, or either thereof has, been filed with the clerk of the court and that the court is asked to settle such report, distribute the property to the heirs or persons entitled thereto, and discharge the personal representative, and it shall give the time and place fixed for the hearing of such final report and petition and shall be signed by the personal representative or the clerk of the court.

Whenever a final report and petition for distribution, or either, shall have been filed in the estate of a decedent and a day fixed for the hearing of the same, the personal representative of such estate shall, not less than twenty days before the hearing, cause to be mailed a copy of the notice of the time and place fixed for hearing to each heir, legatee, devisee and distributee whose name and address are known to him, and proof of such mailing shall be made by affidavit and filed at or before the hearing. [1969 c 70 § 3; 1965 c 145 § 11.76.040. Prior: 1955 c 205 § 13; 1919 c 31 § 1; 1917 c 156 § 162; RRS § 1532. FORMER PART OF SECTION: re Notice of appointment as personal representative, now codified as RCW 11.28.237.]

*Request for special notice of proceedings in probate: RCW 11.28.240.*

**11.76.050 Hearing on final report—Decree of distribution.** Upon the date fixed for the hearing of such final report and petition for distribution, or either thereof, or any day to which such hearing may have been adjourned by the court, if the court be satisfied

that the notice of the time and place of hearing has been given as provided herein, it may proceed to the hearing aforesaid. Any person interested may file objections to the said report and petition for distribution, or may appear at the time and place fixed for the hearing thereof and present his objections thereto. The court may take such testimony as to it appears proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the personal representative should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them, and the court shall, if it approves such report, and finds the estate ready to be closed, cause to be entered a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to the same. Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the personal representative.

The court may, upon such final hearing, partition among the persons entitled thereto, the estate held in common and undivided, and designate and distribute their respective shares; or assign the whole or any part of said estate to one or more of the persons entitled to share therein. The person or persons to whom said estate is assigned shall pay or secure to the other parties interested in said estate their just proportion of the value thereof as determined by the court from the appraisal, or from any other evidence which the court may require.

If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged in the manner provided by law for the sale or mortgaging of property by personal representatives and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.

The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto. No estate shall be partitioned, nor sale thereof made where partition is impracticable except upon a hearing before the court and the court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale; and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable.

The provisions of this section shall be concurrent with and not in derogation of other statutes as to partition of property or sale. [1965 c 145 § 11.76.050. Prior: 1921 c 93 § 1; 1917 c 156 § 163; RRS § 1533; prior: Code 1881 § 1557; 1854 p 297 § 179.]

*Partition: Chapter 7.52 RCW.*

**11.76.060 Continuance to cite in sureties on bond when account incorrect.** If, at any hearing upon any report of any personal representative, it shall appear to the court before which said proceeding is pending that said personal representative has not fully accounted to the beneficiaries of his trust and that said report should not be approved as rendered, the court may continue said hearing to a day certain and may cite the surety upon the bond of said personal representative to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said personal representative and the surety upon his bond. Said citation shall be personally served upon said surety in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the report of said personal representative shall not be approved and the court shall find that said personal representative is indebted to the beneficiary of his trust in any amount, the court may thereupon enter final judgment against said personal representative and the surety upon his bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions. [1965 c 145 § 11.76.060. Prior: 1937 c 28 § 1; RRS § 1590-1.]

**11.76.070 Attorney's fee to contestant of erroneous account or report.** If, in any probate or guardianship proceeding, any personal representative shall fail or neglect to report to the court concerning his trust and any beneficiary or other interested party shall be reasonably required to employ legal counsel to institute legal proceedings to compel an accounting, or if an erroneous account or report shall be rendered by any personal representative and any beneficiary of said trust or other interested party shall be reasonably required to employ legal counsel to resist said account or report as rendered, and upon a hearing an accounting shall be ordered, or the account as rendered shall not be approved, and the said personal representative shall be charged with further liability, the court before which said proceeding is pending may, in its discretion, in addition to statutory costs, enter judgment for reasonable attorney's fees in favor of the person or persons instituting said proceedings and against said personal representative, and in the event that the surety or sureties upon the bond of said personal representative be made a party to said proceeding, then jointly against said surety and said personal representative, which judgment shall be enforced in the same manner and to the same extent as judgments in ordinary civil actions. [1965 c 145 § 11.76.070. Prior: 1937 c 28 § 2; RRS § 1590-2.]

*Rules of court: SPR 98.12W.*

**11.76.080 Representation of incompetent by guardian ad litem—Exception.** If there be any incompetent as defined in RCW 11.88.010 interested in the estate who has no legally appointed guardian, the court:

(1) At any stage of the proceeding in its discretion and for such purpose or purposes as it shall indicate, may, and

(2) For hearings held pursuant to RCW 11.52.010, 11.52.020, 11.68.040 and 11.76.050 as now or hereafter amended, or for entry of an order adjudicating testacy or intestacy and heirship when no personal representative is appointed to administer the estate of the decedent, shall appoint some disinterested person as guardian ad litem to represent such incompetent with reference to any petition, proceeding report, or adjudication of testacy or intestacy without the appointment of a personal representative to administer the estate of decedent in which the incompetent may have an interest, who, on behalf of the incompetent, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his services: *Provided, however,* That where a surviving spouse is the sole beneficiary under the terms of a will, the court may grant a motion by the personal representative to waive the appointment of a guardian ad litem for a person who is the minor child of such surviving spouse and the decedent and who is incompetent solely for the reason of his being under eighteen years of age. [1974 1st ex.s. c 117 § 45; 1971 c 28 § 1; 1969 c 70 § 4; 1965 c 145 § 11.76.080. Prior: 1917 c 156 § 164; RRS § 1534; prior: Code 1881 § 1558; 1854 p 297 § 180.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.  
*"Incompetent" defined: RCW 11.88.010.*

**11.76.090 Distribution of one thousand dollars or less to minor.** When a decree of distribution is made by the court in administration upon a decedent's estate and distribution is ordered to a person under the age of eighteen years, of a sum of one thousand dollars or less, the court, in such order of distribution, shall order the same paid, for the use and as the property of said minor, to the person named in said order of distribution to receive the same, without requiring bond or appointment of any guardian. [1974 1st ex.s. c 117 § 11; 1971 c 28 § 2; 1965 c 145 § 11.76.090. Prior: 1941 c 206 § 2; Rem. Supp. 1941 § 1534-1.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.76.095 Distribution of estates to minors.** When a decree of distribution is made by the court in administration upon a decedent's estate or when distribution is made by a personal representative under a nonintervention will and distribution is ordered under such decree or authorized under such nonintervention will to a person under the age of eighteen years, the court shall require either that

(1) the money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depository, or

(2) a general guardian shall be appointed and qualify and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding.

This section shall not bar distribution under RCW 11.76.090 as now or hereafter amended. [1974 1st ex.s. c 117 § 12; 1971 c 28 § 3; 1965 c 145 § 11.76.095.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.76.100 Receipts for expenses to be produced by personal representative.** In rendering his accounts or reports the personal representative shall produce receipts or canceled checks for the expenses and charges which he shall have paid, which receipts shall be filed and remain in court; however, he may be allowed any item of expenditure, not exceeding twenty dollars, for which no receipt is produced, if such item be supported by his own oath, but such allowances without receipts shall not exceed the sum of three hundred dollars in any one estate. [1965 c 145 § 11.76.100. Prior: 1917 c 156 § 170; RRS § 1540; prior: Code 1881 § 1553; 1854 p 297 § 176.]

**11.76.110 Order of payment of debts.** After payment of costs of administration the debts of the estate shall be paid in the following order:

(1) Funeral expenses in such amount as the court shall order.

(2) Expenses of the last sickness, in such amount as the court shall order.

(3) Wages due for labor performed within sixty days immediately preceding the death of decedent.

(4) Debts having preference by the laws of the United States.

(5) Taxes, or any debts or dues owing to the state.

(6) Judgments rendered against the deceased in his lifetime which are liens upon real estate on which executions might have been issued at the time of his death, and debts secured by mortgages in the order of their priority.

(7) All other demands against the estate. [1965 c 145 § 11.76.110. Prior: 1917 c 156 § 171; RRS § 1541; prior: Code 1881 § 1562; 1860 p 213 § 264; 1854 p 298 § 184.]

*Borrowing on general credit of estate: RCW 11.56.280.*

*Claims against estate: Chapter 11.40 RCW.*

*Sale, etc., of property—Priority as to realty or personalty: RCW 11.56.015.*

*Tax constitutes debt—Priority of lien: RCW 82.32.240.*

*Wages, preference on death of employer: RCW 49.56.020.*

**11.76.120 Limitation on preference to mortgage or judgment.** The preference given in RCW 11.76.110 to a mortgage or judgment shall only extend to the proceeds of the property subject to the lien of such mortgage or judgment. [1965 c 145 § 11.76.120. Prior: 1917 c 156 § 172; RRS § 1542; prior: 1897 c 22 § 1; Code 1881 § 1653; 1854 p 298 § 185.]

**11.76.130 Expense of monument.** Personal representatives of the estate of any deceased person are hereby authorized to expend a reasonable amount out of the

estate of the decedent to erect a monument or tombstone suitable to mark the grave or crypt of the said decedent, and the expense thereof shall be paid as the funeral expenses are paid. [1965 c 145 § 11.76.130. Prior: 1917 c 156 § 175; RRS § 1545; prior: Code 1881 § 1555; 1875 p 127 § 1.]

**11.76.140 Allowance of claims must precede payment.** No claim against the estate shall be paid until the same shall first have been allowed by both the personal representative and the court. [1965 c 145 § 11.76.140. Prior: 1917 c 156 § 173; RRS § 1543.]

**11.76.150 Payment of claims where estate insufficient.** If the estate shall be insufficient to pay the debts of any class, each creditor shall be paid in proportion to his claim, and no other creditor of any lower class shall receive any payment until all those of the preceding class shall have been fully paid. [1965 c 145 § 11.76.150. Prior: 1917 c 156 § 174; RRS § 1544; prior: Code 1881 § 1564; 1854 p 298 § 186.]

*Appropriation to pay debts and expenses: RCW 11.56.150.*

*Community property: Chapter 26.16 RCW.*

*Descent and distribution of real and personal estate: RCW 11.04.015.*

*Priority of sale, etc. as between realty and personalty: RCW 11.56.015.*

**11.76.160 Liability of personal representative.** Whenever a decree shall have been made by the court for the payment of creditors, the personal representative shall be personally liable to each creditor for his claim or the dividend thereon, except when his inability to make the payment thereof from the property of the estate shall result without fault upon his part. The personal representative shall likewise be liable on his bond to each creditor. [1965 c 145 § 11.76.160. Prior: 1917 c 156 § 176; RRS § 1546; prior: 1891 c 155 § 35; Code 1881 § 1568; 1854 p 299 § 190.]

**11.76.170 Action on claim not acted on—Contribution.** If, after the accounts of the personal representative have been settled and the property distributed, it shall appear that there is a creditor or creditors whose claim or claims have been duly filed and not paid or disallowed, the said claim or claims shall not be a lien upon any of the property distributed, but the said creditor or creditors shall have a cause of action against the personal representative and his bond, for such an amount as such creditor or creditors would have been entitled to receive had the said claim been duly allowed and paid, and shall also have a cause of action against the distributees and creditors for a contribution from them in proportion to the amount which they have received. If the personal representative or his sureties be required to make any payment in this section provided for, he or they shall have a right of action against said distributees and creditors to compel them to contribute their just share. [1965 c 145 § 11.76.170. Prior: 1917 c 156 § 177; RRS § 1547; prior: Code 1881 § 1569; 1860 p 214 § 271; 1854 p 299 § 191.]



**11.76.180 Order maturing claim not due.** If there be any claim not due the court may in its discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration. [1965 c 145 § 11.76.180. Prior: 1917 c 156 § 178; RRS § 1548; prior: Code 1881 § 1567; 1854 p 298 § 189.]

**11.76.190 Procedure on contingent and disputed claims.** If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require. [1965 c 145 § 11.76.190. Prior: 1917 c 156 § 179; RRS § 1549; prior: Code 1881 § 1567; 1854 p 298 § 189.]

**11.76.200 Agent for absentee distributee.** When any estate has been or is about to be distributed by decree of the court as provided in this chapter, to any person who has not been located, the court shall appoint an agent for the purpose of representing the interests of such person and of taking possession and charge of said estate for the benefit of such absentee person: *Provided*, That no public official may be appointed as agent under this section. [1965 c 145 § 11.76.200. Prior: 1955 ex.s. c 7 § 1; 1917 c 156 § 165; RRS § 1535.]

**11.76.210 Agent's bond.** Such agent shall make, subscribe and file an oath for the faithful performance of his duties, and shall give a bond to the state, to be approved by the court, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive any property of said estate. [1965 c 145 § 11.76.210. Prior: 1955 ex.s. c 7 § 2; 1917 c 156 § 166; RRS § 1536.]

**11.76.220 Sale of unclaimed estate—Remittance of proceeds to tax commission.** If the estate remains in the hands of the agent unclaimed for three years, any property not in the form of cash shall be sold under order of the court, and all funds, after deducting a reasonable sum for expenses and services of the agent, to be fixed by the court, shall be paid into the county treasury. The county treasurer shall issue triplicate receipts therefor, one of which shall be filed with the county auditor, one with the court, and one with the tax commission. If the funds remain in the county treasury unclaimed for a period of four years and ninety days, the county treasurer shall forthwith remit them to the tax commission for deposit in the state treasury in the fund in which escheats and forfeitures are by law required to be deposited. [1965 c 145 § 11.76.220. Prior: 1955 ex.s. c 7 § 4; 1917 c 156 § 167; RRS § 1537.]

*Escheats: Chapter 11.08 RCW.*

**11.76.230 Liability of agent.** The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the

funds to the county treasury, and may be sued thereon by any person interested including the state. [1965 c 145 § 11.76.230. Prior: 1955 ex.s. c 7 § 5; 1917 c 156 § 168; RRS § 1538.]

**11.76.240 Claimant to proceeds of sale.** During the time the estate is held by the agent, or within four years after it is delivered to the county treasury, claim may be made thereto only by the absentee person or his legal representative, excepting that if it clearly appears that such person died prior to the decedent in whose estate distribution was made to him, but leaving lineal descendants surviving, such lineal descendants may claim. If any claim to the estate is made during the period specified above, the claimant shall forthwith notify the tax commission in writing of such claim. The court, being first satisfied as to the right of such person to the estate, and after the filing of a clearance from the tax commission, shall order the agent, or the county treasurer, as the case may be, to forthwith deliver the estate, or the proceeds thereof, if sold, to such person. [1965 c 145 § 11.76.240. Prior: 1955 ex.s. c 7 § 6; 1917 c 156 § 169; RRS § 1539.]

**11.76.243 Heirs may institute probate proceedings if no claimant appears.** If no person appears to claim the estate within four years after it is delivered to the county treasury, as provided by RCW 11.76.240, any heirs of the absentee person may institute probate proceedings on the estate of such absentee within ninety days thereafter. The fact that no claim has been made to the estate by the absentee person during the specified time shall be deemed prima facie proof of the death of such person for the purpose of issuing letters of administration in his estate. In the event letters of administration are issued within the period provided above, the county treasurer shall make payment of the funds held by him to the administrator upon being furnished a certified copy of the letters of administration. [1965 c 145 § 11.76.243. Prior: 1955 ex.s. c 7 § 7.]

**11.76.245 Procedure when claim made after time limitation.** After any time limitation prescribed in RCW 11.76.220, 11.76.240 or 11.76.243, the absentee claimant may, at any time, if the assets of the estate have not been claimed under the provisions of RCW 11.76.240 and 11.76.243, notify the tax commission of his claim to the estate, and file in the court which had jurisdiction of the original probate a petition claiming the assets of the estate. The tax commission may appear in answer to such petition. Upon proof being made to the probate court that the claimant is entitled to the estate assets, the court shall render its judgment to that effect and the assets shall be paid to the claimant without interest, upon appropriation made by the legislature. [1965 c 145 § 11.76.245. Prior: 1955 ex.s. c 7 § 8.]

**11.76.247 When court retains jurisdiction after entry of decree of distribution.** After the entry of the decree of distribution in the probate proceedings the court shall retain jurisdiction for the purpose of carrying out the

provisions of RCW 11.76.200, 11.76.210, 11.76.220, 11.76.230, 11.76.240, 11.76.243 and 11.76.245. [1965 c 145 § 11.76.247. Prior: 1955 ex.s. c 7 § 3.]

**11.76.250 Letters after final settlement.** A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued. [1965 c 145 § 11.76.250. Prior: 1917 c 156 § 180; RRS § 1550; prior: Code 1881 § 1603; 1854 p 304 § 224.]

### Chapter 11.80 ESTATES OF ABSENTEES

#### Sections

- 11.80.010 Petition—Notice—Hearing—Appointment of trustee.
- 11.80.020 Inventory and appraisal—Bond of trustee.
- 11.80.030 Reports of trustee.
- 11.80.040 Sale of property—Application of proceeds and income.
- 11.80.050 Allowance for support of dependents—Sale of property.
- 11.80.055 Continuation of absentee's business—Performance of absentee's contracts.
- 11.80.060 Removal or resignation of trustee—Final account.
- 11.80.070 Period of trusteeship.
- 11.80.080 Provisional distribution—Notice of hearing—Will.
- 11.80.090 Hearing—Distribution—Bond of distributees.
- 11.80.100 Final distribution—Notice of hearing—Decree.
- 11.80.110 Escheat for want of presumptive heirs.
- 11.80.120 Armed forces, etc., personnel missing in action, interned or captured construed as "absentee"
- 11.80.130 Summary procedure without full trustee proceeding—When permitted—Application for order—Form.

*Unknown heirs, etc.—Pleading, process, etc.:* RCW 4.28.130–4.28.160; **Rules of court:** CR 10.

*Written finding of presumed death, missing in action, etc.:* RCW 5.40.020–5.40.040.

**11.80.010 Petition—Notice—Hearing—Appointment of trustee.** Whenever it shall be made to appear by petition to any judge of the superior court of any county that there is property in such county, either real or personal, that requires care and attention, or is in such a condition that it is a menace to the public health, safety or welfare, or that the custodian of such property appointed by the owner thereof is either unable or unwilling to continue longer in the care and custody thereof, and that the owner of such property has absented himself from the county and that his whereabouts is unknown and cannot with reasonable diligence be ascertained, or that the absentee owner is a person defined in RCW 11.80.120, which petition shall state the name of the absent owner, his approximate age, his last known place of residence, the circumstances under which he left and the place to which he was going, if known, his business or occupation and his physical appearance and habits so far as known, the judge to whom such petition is presented shall set a time for hearing such petition not less than six weeks from the date of filing, and shall by order direct that a notice of such hearing be published for three successive weeks in a legal newspaper published in the county

where such petition is filed and in such other counties and states as will in the judgment of the court be most likely to come to the attention of the absentee or of persons who may know his whereabouts, which notice shall state the object of the petition and the date of hearing, and set forth such facts and circumstances as in the judgment of the court will aid in identifying the absentee, and shall contain a request that all persons having knowledge concerning the absentee shall advise the court of the facts: *Provided, however,* That the court may, upon the filing of said petition, appoint a temporary trustee, who shall have the powers, duties and qualifications of a special administrator.

If it shall appear at such hearing that the whereabouts of the absentee is unknown, but there is reason to believe that upon further investigation and inquiry he may be found, the judge may continue the hearing and order such inquiry and advertisement as will in his discretion be liable to disclose the whereabouts of the absentee, but when it shall appear to the judge at such hearing or any adjournment thereof that the whereabouts of the absentee cannot be ascertained, he shall appoint a suitable person resident of the county as trustee of such property, taking into consideration the character of the property and the fitness of such trustee to care for the same, preferring in such appointment the husband or wife of the absentee to his presumptive heirs, the presumptive heirs to kin more remote, the kin to strangers, and creditors to those who are not otherwise interested, provided they are fit persons to have the care and custody of the particular property in question and will accept the appointment and qualify as herein-after provided. [1972 ex.s. c 83 § 1; 1965 c 145 § 11.80.010. Prior: 1915 c 39 § 1; RRS § 1715–1.]

*Special administrators:* Chapter 11.32 RCW.

**11.80.020 Inventory and appraisal—Bond of trustee.** The trustee so appointed shall make, subscribe and file in the office of the clerk of the court an oath for the faithful performance of his duties, and shall, within such time as may be fixed by the judge, prepare and file an inventory of such property, and the judge shall thereupon appoint a disinterested and qualified person to appraise such property, and report his appraisal to the court within such time as the court may fix. Upon the coming in of the inventory and appraisal, the judge shall fix the amount of the bond to be given by the trustee, which bond shall in no case be less than the appraised value of the personal property and the annual rents and profits of the real property, and the trustee shall thereupon file with the clerk of the court a good and sufficient bond in the amount fixed and with surety to be approved by the court, conditioned for the faithful performance of his duties as trustee, and for accounting for such property, its rents, issues, profits, and increase. [1967 c 168 § 15; 1965 c 145 § 11.80.020. Prior: 1915 c 39 § 2; RRS § 1715–2.]

**11.80.030 Reports of trustee.** The trustee shall, at the expiration of one year from the date of his appointment and annually thereafter and at such times as the court may direct, make and file a report and account of his

trusteeship, setting forth specifically the amounts received and expended and the conditions of the property. [1965 c 145 § 11.80.030. Prior: 1915 c 39 § 3; RRS § 1715-3.]

**11.80.040 Sale of property—Application of proceeds and income.** If necessary to pay debts against the absentee which have been duly approved and allowed in the same form and manner as provided for the approving and allowing of claims against the estate of a deceased person or for such other purpose as the court may deem proper for the preservation of the estate, the trustee may sell, lease or mortgage real or personal property of the estate under order of the court so to do, which order shall specify the particular property affected and the method, whether by public sale, private sale or by negotiation, and the terms thereof, and the trustee shall hold the proceeds of such sale, after deducting the necessary expenses thereof, subject to the order of the court. The trustee is authorized and empowered to, by order of the court, expend the proceeds received from the sale of such property, and also the rents, issues and profits accruing therefrom in the care, maintenance and upkeep of the property, so long as the trusteeship shall continue, and the trustee shall receive out of such property such compensation for his services and those of his attorney as may be fixed by the court. The notices and procedures in conducting sales, leases and mortgages hereunder shall be as provided in chapter 11.56 RCW. [1965 c 145 § 11.80.040. Prior: 1915 c 39 § 4; RRS § 1715-4.]

*Rules of court: SPR 98.12W.*

**11.80.050 Allowance for support of dependents—Sale of property.** Whenever a petition is filed in said estate from which it appears to the satisfaction of the court that the owner of such property left a husband or wife, child or children, dependent upon such absentee for support or upon the property in the estate of such absentee, either in whole or in part, the court shall hold a hearing on said petition, after such notice as the court may direct, and upon such hearing shall enter such order as it deems advisable and may order an allowance to be paid out of any of the property of such estate, either community or separate, as the court shall deem reasonable and necessary for the support and maintenance of such dependent or dependents, pending the return of the absentee, or until such time as the property of said estate may be provisionally distributed to the presumptive heirs or to the devisees and legatees. Such allowance shall be paid by the trustee to such persons and in such manner and at such periods of time as the court may direct. For the purpose of carrying out the provisions of this section the court may direct the sale of any of the property of the estate, either real or personal, in accordance with the provisions of RCW 11.80.040. [1965 c 145 § 11.80.050. Prior: 1925 ex.s. c 80 § 1; RRS § 1715-4a.]

**11.80.055 Continuation of absentee's business—Performance of absentee's contracts.** Upon a showing of advantage to the estate of the absentee, the court may

authorize the trustee to continue any business of the absentee in accordance with the provisions of RCW 11.48.025. The trustee may also obtain an order allowing the performance of the absentee's contracts in accordance with the provisions of chapter 11.60 RCW. [1965 c 145 § 11.80.055.]

**11.80.060 Removal or resignation of trustee—Final account.** The court shall have the power to remove or to accept the resignation of such trustee and appoint another in his stead. At the termination of his trust, as hereinafter provided or in case of his resignation or removal, the trustee shall file a final account, which account shall be settled in the manner provided by law for settling the final accounts of personal representatives. [1965 c 145 § 11.80.060. Prior: 1915 c 39 § 5; RRS § 1715-5.]

**11.80.070 Period of trusteeship.** Such trusteeship shall continue until such time as the owner of such property shall return or shall appoint a duly authorized agent or attorney in fact to care for such property, or until such time as the property shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees of the absentee as hereinafter provided, or until such time as the property shall escheat to the state as hereinafter provided. [1965 c 145 § 11.80.070. Prior: 1915 c 39 § 6; RRS § 1715-6.]

**11.80.080 Provisional distribution—Notice of hearing—Will.** Whenever the owner of such property shall have been absent from the county for the space of five years and his whereabouts are unknown and cannot with reasonable diligence be ascertained, his presumptive heirs at law may apply to the court for an order of provisional distribution of such property, and to be let into provisional possession thereof: *Provided*, That such provisional distribution may be made at any time prior to the expiration of five years, when it shall be made to appear to the satisfaction of the court that there are strong presumptions that the absentee is dead; and in determining the question of presumptive death, the court shall take into consideration the habits of the absentee, the motives of and the circumstances surrounding the absence, and the reasons which may have prevented the absentee from being heard of.

Notice of hearing upon application for provisional distribution shall be published in like manner as notices for the appointment of trustees are published.

If the absentee left a will in the possession of any person such person shall present such will at the time of hearing of the application for provisional distribution and if it shall be made to appear to the court that the absentee has left a will and the person in possession thereof shall fail to present it, a citation shall issue requiring him so to do, and such will shall be opened, read, proven, filed and recorded in the case, as are the wills of decedents. [1965 c 145 § 11.80.080. Prior: 1915 c 39 § 7; RRS § 1715-7.]

*Notice for appointment of trustees: RCW 11.80.010.*

**11.80.090 Hearing—Distribution—Bond of distributees.** If it shall appear to the satisfaction of the court upon the hearing of the application for provisional distribution that the absentee has been absent and his whereabouts unknown for the space of five years, or there are strong presumptions that he is dead, the court shall enter an order directing that the property in the hands of the trustee shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees under the will, as the case may be, upon condition that such heirs, devisees and legatees respectively give and file in the court bonds with good and sufficient surety to be approved by the court, conditioned for the return of or accounting for the property provisionally distributed in case the absentee shall return and demand the same, which bonds shall be respectively in twice the amount of the value of the personal property distributed, and in ten times the amount of estimated annual rents, issues and profits of any real property so provisionally distributed. [1965 c 145 § 11.80.090. Prior: 1915 c 39 § 8; RRS § 1715-8.]

**11.80.100 Final distribution—Notice of hearing—Decree.** Whenever the owner of such property shall have been absent from the county for a space of seven years and his whereabouts are unknown and cannot with reasonable diligence be ascertained, his presumptive heirs at law or the legatees and devisees under the will, as the case may be, to whom the property has been provisionally distributed, may apply to the court for a decree of final distribution of such property and satisfaction, discharge and exoneration of the bonds given upon provisional distribution. Notice of hearing of such application shall be given in the same manner as notice of hearing of application for the appointment of trustee and for provisional distribution and if at the final hearing it shall appear to the satisfaction of the court that the owner of the property has been absent and unheard of for the space of seven years and his whereabouts are unknown, the court shall exonerate the bonds given on provisional distribution and enter a decree of final distribution, distributing the property to the presumptive heirs at law of the absentee or to his devisees and legatees, as the case may be. [1965 c 145 § 11.80.100. Prior: 1915 c 39 § 9; RRS § 1715-9.]

**11.80.110 Escheat for want of presumptive heirs.** Whenever the owner of such property for which a trustee has been appointed under the provisions of this chapter shall have been absent and unheard of for a period of seven years and no presumptive heirs at law have appeared and applied for the provisional distribution of such property and no will of the absentee has been presented and proven, the trustee appointed under the provisions of the chapter shall apply to the court for a final settlement of his account and upon the settlement of such final account the property of the absentee shall be escheated in the manner provided by law for escheating property of persons who die intestate leaving no heirs. [1965 c 145 § 11.80.110. Prior: 1915 c 39 § 10; RRS § 1715-10.]

*Escheats: Chapter 11.08 RCW.*

*Uniform disposition of unclaimed property act: Chapter 63.28 RCW.*

**11.80.120 Armed forces, etc., personnel missing in action, interned or captured construed as "absentee".** Any person serving in or with the armed forces of the United States, in or with the Red Cross, or in or with the merchant marine or otherwise, during any period of time when a state of hostilities exists between the United States and any other power and for one year thereafter, who has been reported or listed as missing in action, or interned in a neutral country, or captured by the enemy, shall be an "absentee" within the meaning of this chapter. [1972 ex.s. c 83 § 2.]

**11.80.130 Summary procedure without full trustee proceeding—When permitted—Application for order—Form.** (1) If the spouse of any absentee owner, or his next of kin, if said absentee has no spouse, shall wish to sell or transfer any property of the absentee which has a gross value of less than five thousand dollars, or shall require the consent of the absentee in any matter regarding the absentee's children, or any other matter in which the gross value of the subject matter is less than five thousand dollars, such spouse or next of kin may apply to the superior court for an order authorizing said sale, transfer, or consent without opening a full trustee proceeding as provided in this chapter. The applicant may make the application without the assistance of an attorney. Said application shall be made by petition on the following form, which form shall be made readily available to the applicant by the clerk of the superior court.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

|  |  |
|--|--|
| <p style="text-align: center;">-----<br/> <span style="float: right;"><i>Plaintiff,</i></span><br/> vs.<br/> <span style="float: right;"><i>Defendant.</i></span><br/> -----</p>   | <p style="text-align: center;">No. -----<br/> <b>PETITION FOR<br/> SUMMARY<br/> RELIEF</b></p> |
| <p>Petitioner, -----, whose residence is -----, and -----, Washington, and who is the ----- of the absentee, -----, states that the absentee has been ----- since -----, when ----- Petitioner desires to sell/transfer ----- of the value of -----, because ----- The terms of the sale/transfer are ----- Petitioner requires the consent of the absentee for the purpose of -----</p> |  |
| <p>-----<br/> <i>Petitioner</i></p>  |  |

(Affidavit of Acknowledgment)

(2) The court may, without notice, enter an order on said petition if it deems the relief requested in said petition necessary to protect the best interests of the absentee or his dependents.

(3) Such order shall be prima facie evidence of the validity of the proceedings and the authority of the petitioner to make a conveyance or transfer of the property or to give the absentee's consent in any manner described by subsection (1) of this section. [1972 ex.s. c 83 § 3.]

### Chapter 11.84 INHERITANCE RIGHTS OF SLAYERS

#### Sections

|           |   |
|-----------|---|
| 11.84.010 | Definitions.  |
| 11.84.020 | Slayer not to benefit from death.                                 |
| 11.84.030 | Slayer deemed to predecease decedent.                             |
| 11.84.040 | Distribution of decedent's property.                              |
| 11.84.050 | Distribution of property held jointly with slayer.                |
| 11.84.060 | Reversions and vested remainders.                                 |
| 11.84.070 | Property subject to divestment, etc.                              |
| 11.84.080 | Contingent remainders and future interests.                       |
| 11.84.090 | Property appointed—Powers of revocation or appointment.           |
| 11.84.100 | Insurance proceeds.   |
| 11.84.110 | Payment by insurance company, bank, etc.—No additional liability. |
| 11.84.120 | Rights of persons without notice dealing with slayer.             |
| 11.84.130 | Record of conviction as evidence against claimant of property.    |
| 11.84.900 | Chapter not to be construed as penal.                             |

*Denial or reduction of award in lieu of homestead: RCW 11.52.012.*

#### 11.84.010 Definitions. As used in this chapter:

(1) "Slayer" shall mean any person who participates, either as a principal or an accessory before the fact, in the wilful and unlawful killing of any other person.

(2) "Decedent" shall mean any person whose life is so taken.

(3) "Property" shall include any real and personal property and any right or interest therein. [1965 c 145 § 11.84.010. Prior: 1955 c 141 § 1.]

**11.84.020 Slayer not to benefit from death.** No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following. [1965 c 145 § 11.84.020. Prior: 1955 c 141 § 2.]

**11.84.030 Slayer deemed to predecease decedent.** The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended. [1965 c 145 § 11.84.030. Prior: 1955 c 141 § 3.]

**11.84.040 Distribution of decedent's property.** Property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent. [1965 c 145 § 11.84.040. Prior: 1955 c 141 § 4.]

**11.84.050 Distribution of property held jointly with slayer.** (1) One-half of any property held by the slayer and the decedent as joint tenants, joint owners or joint

obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(2) As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(3) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other. [1965 c 145 § 11.84.050. Prior: 1955 c 141 § 5.]

**11.84.060 Reversions and vested remainders.** Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period. [1965 c 145 § 11.84.060. Prior: 1955 c 141 § 6.]

**11.84.070 Property subject to divestment, etc.** Any interest in property whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter. [1965 c 145 § 11.84.070. Prior: 1955 c 141 § 7.]

**11.84.080 Contingent remainders and future interests.** As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent;

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent. [1965 c 145 § 11.84.080. Prior: 1955 c 141 § 8.]

**11.84.090 Property appointed—Powers of revocation or appointment.** (1) Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of

appointment shall pass to the estate of the decedent, and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer. [1965 c 145 § 11.84.090. Prior: 1955 c 141 § 9.]

**11.84.100 Insurance proceeds.** (1) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or his estate as secondary beneficiary to him and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as secondary beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living. [1965 c 145 § 11.84.100. Prior: 1955 c 141 § 10.]

**11.84.110 Payment by insurance company, bank, etc.—No additional liability.** Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer. [1965 c 145 § 11.84.110. Prior: 1955 c 141 § 11.]

**11.84.120 Rights of persons without notice dealing with slayer.** The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has agreed to purchase, from the slayer for value and without notice property which the slayer would have acquired except for the terms of this chapter, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this chapter, and the slayer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds. [1965 c 145 § 11.84.120. Prior: 1955 c 141 § 12.]

**11.84.130 Record of conviction as evidence against claimant of property.** The record of his conviction of having participated in the wilful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under

this chapter. [1965 c 145 § 11.84.130. Prior: 1955 c 141 § 13.]

*Evidence, proof of public documents: Chapter 5.44 RCW; Rules of court: CR 44.*

**11.84.900 Chapter not to be construed as penal.** This chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed. [1965 c 145 § 11.84.900. Prior: 1955 c 141 § 14.]

## Chapter 11.86 DISCLAIMER OF INTERESTS

### Sections

|           |   |
|-----------|---|
| 11.86.010 | Definitions.  |
| 11.86.020 | Disclaimer of interest authorized.  |
| 11.86.030 | Times for filing.   |
| 11.86.040 | Effective date—Filing—Recording—Notice.   |
| 11.86.050 | Disposition of disclaimed interest.   |
| 11.86.060 | When right to disclaim barred.  |
| 11.86.070 | Spendthrift or similar restriction, effect—Effect of filing disclaimer or waiver. |
| 11.86.080 | Rights under other statutes or rules not abridged.                                |
| 11.86.090 | Interests existing on effective date of chapter.                                  |

**11.86.010 Definitions.** As used in this section, unless otherwise clearly required by the context:

(1) "Beneficiary" means and includes any person entitled, but for his disclaimer, to take an interest: By intestate succession, devise, legacy, or bequest; by succession to a disclaimed interest by will, trust instrument, intestate succession, or through the exercise or nonexercise of a testamentary or other power of appointment; by virtue of a renunciation and election to take against a will; as beneficiary of a testamentary or other written trust; pursuant to the exercise or nonexercise of a testamentary or other power of appointment; as donee of a power of appointment created by testamentary or trust instrument; or otherwise under a testamentary or trust instrument or community property agreement; or by right of survivorship.

(2) "Interest" means and includes the whole of any property, real or personal, legal or equitable, or any fractional part, share or particular portion or specific assets thereof, or any estate in any such property, or power to appoint, consume, apply or expend property or any other right, power, privilege or immunity relating thereto.

(3) "Disclaimer" means a written instrument which declines, refuses, releases, renounces or disclaims an interest which would otherwise be succeeded to by a beneficiary, which instrument defines the nature and extent of the interest disclaimed thereby and which must be signed, witnessed and acknowledged by the disclaimant in the manner provided for deeds of real estate, and also a written instrument which exercises a power to invade the corpus or principal of an estate or trust when such exercise has the effect of terminating an interest which could otherwise be succeeded to by a beneficiary. [1973 c 148 § 2.]

**11.86.020 Disclaimer of interest authorized.** A beneficiary may disclaim any interest in whole or in part, or with reference to specific parts, shares or assets thereof, by filing a disclaimer in court in the manner provided in RCW 11.86.030 and 11.86.040. A guardian, executor, administrator or other personal representative of the estate of a minor, incompetent or deceased beneficiary, if he deems it in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and not detrimental to the best interests of the beneficiary, with or without an order of the probate court, may execute and file a disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary himself could disclaim if he were living, of legal age and competent. A beneficiary likewise may execute and file a disclaimer by agent or attorney so empowered. [1973 c 148 § 3.]

**11.86.030 Times for filing.** Such disclaimer shall be filed at any time after the creation of the interest, but in all events within the later of six months from June 7, 1973 or six months after the death of the person by whom the interest was created or from whom it is or, but for the disclaimer would be received, or, if the disclaimant is not finally ascertained as a beneficiary or his interest has not become indefeasibly fixed both in quality and quantity as of the death of such person, then such disclaimer shall be filed not later than six months after the event which causes or, but for the disclaimer, would cause him so to become finally ascertained and his interest to become indefeasibly fixed both in quality and quantity. [1973 c 148 § 4.]

**11.86.040 Effective date—Filing—Recording—Notice.** Such disclaimer shall be effective upon being filed with the clerk of the court of which the estate of the person by whom the interest was created or from whom it would have been received is, or has been, administered or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of the estate of such person, where it shall be indexed under the name of the decedent in the probate index upon payment of a fee of two dollars. A copy of the disclaimer shall be delivered or mailed by certified or registered mail, return receipt requested to the representative, trustee or other person having legal title to, or possession of, the property in which the interest disclaimed exists, and no such representative, trustee or person shall be liable for any otherwise proper distribution or other disposition made without actual knowledge of the disclaimer, or in reliance upon the disclaimer and without actual knowledge that said disclaimer is barred as provided in RCW 11.86.060. If an interest in or relating to real estate is disclaimed, the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the clerk of the court wherein the same has been filed, shall be recorded in the office of the auditor in the county or counties where the real estate is situated and shall constitute notice to

all persons only from and after the time of such recording. [1973 c 148 § 5.]

**11.86.050 Disposition of disclaimed interest.** Unless the person by whom the interest was created or from whom it would have been received has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes him to become finally ascertained as a beneficiary and his interest to become indefeasibly fixed both in quality and quantity and in any case, the disclaimer shall relate for all purposes to such date, whether filed before or after such death or other event. However, one disclaiming an interest in a nonresiduary gift, devise or bequest shall not be excluded, unless his disclaimer so provides, from sharing in a gift, devise or bequest of the residue even though, through lapse, such residue includes the assets disclaimed. An interest of any nature in or to the estate of an intestate may be declined, refused or disclaimed as herein provided without ever vesting in the disclaimant. [1973 c 148 § 6.]

**11.86.060 When right to disclaim barred.** The right to disclaim otherwise conferred by this chapter shall be barred if the beneficiary is insolvent at the time of the event giving rise to the commencement of the six months period within which the disclaimer must be filed. Any voluntary assignment or transfer of, or contract to assign or transfer, an interest in real or personal property, or written waiver of the right to disclaim the succession to an interest in real or personal property, by any beneficiary, or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before he has filed a disclaimer, as provided in RCW 11.86.040, bars the right otherwise conferred on such beneficiary to disclaim as to such interest. [1973 c 148 § 7.]

**11.86.070 Spendthrift or similar restriction, effect—Effect of filing disclaimer or waiver.** The right to disclaim granted by RCW 11.86.020 exists regardless of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. A disclaimer, when filed as provided in RCW 11.86.040, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or beneficiary so waiving and all parties thereafter claiming by, through or under him, except that a beneficiary so waiving may thereafter transfer, assign or release his interest if such is not prohibited by an express or implied spendthrift provision. [1973 c 148 § 8.]

**11.86.080 Rights under other statutes or rules not abridged.** This chapter shall not abridge the right of any person, apart from this chapter, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest. [1973 c 148 § 9.]



**11.86.090 Interests existing on effective date of chapter.** Any interest which exists on June 7, 1973 but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be disclaimed after June 7, 1973 in the manner provided in RCW 11.86.030 and 11.86.040. [1973 c 148 § 10.]

**Chapter 11.88**  
**GUARDIANSHIP—APPOINTMENT,  
QUALIFICATION, REMOVAL OF GUARDIANS**

**Sections**

- 11.88.010 Authority to appoint.
- 11.88.020 Qualifications.
- 11.88.030 Petition—Contents.
- 11.88.040 Notice and hearing, when required—Service.
- 11.88.080 Testamentary guardians.
- 11.88.090 Guardian ad litem.
- 11.88.100 Oath and bond of guardian.
- 11.88.105 Reduction in amount of bond.
- 11.88.107 When bond may be dispensed with.
- 11.88.110 Law on executors' and administrators' bonds applicable.
- 11.88.115 Notice to tax commission.
- 11.88.120 Procedure on removal or death of guardian—Delivery of estate to successor.
- 11.88.130 Transfer of jurisdiction and venue.
- 11.88.140 Termination of guardianship.
- 11.88.150 Administration of deceased incompetent's estate.

**Rules of court: Guardians**

- capacity to sue: CR 17.*
- estates, limitation on expenditures: SPR 98.20W.*
- judges duty on appointing, compensating: CJE 12.*
- probate proceedings, application for fee, notice: SPR 98.12W.*
- settlement of claims of minors: SPR 98.16W.*
- suit in own name: CR 17*

*Allowing child to work without permit, penalty: RCW 26.28.060.*

*Assault, lawful use of force: RCW 9.11.040(4).*

*Bank soliciting appointment as guardian, penalty: RCW 30.04.260.*

*Costs against guardian of infant plaintiff: RCW 4.84.140.*

*Declaratory judgments: Chapter 7.24 RCW.*

*Embezzlement by guardian: RCW 9.54.010(3).*

*Eminent domain by cities, guardian ad litem appointed: RCW 8.12.180.*

*Eminent domain by corporations, service on guardian of minors, idiots, lunatics or distracted persons: RCW 8.20.020.*

*Eminent domain by state, service of notice on guardian: RCW 8.04.020.*

*Excise taxes, liability for, notice to tax commission: RCW 82.32.240.*

*Guardian may sue in own name: RCW 4.08.020; Rules of court: CR 17.*

*Habeas corpus, granting of writ to guardian: RCW 7.36.020.*

*Industrial insurance benefits, appointment of guardian to manage: RCW 51.04.070.*

*Insane person, appearance by guardian: RCW 4.08.060.*

*Investment of trust funds, guardians subject to chapter 30.24 RCW: RCW 30.24.015.*

**Investments, authorized**

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*housing authority bonds: RCW 35.82.220.*

*United States corporation bonds: RCW 39.60.010.*

*Jurors, challenge of, guardian and ward relationship ground for implied bias: RCW 4.44.180.*

**Juvenile court**

*arrested juvenile released to guardian, contempt for failure to produce child for hearing: RCW 13.04.120.*

*commitment to truant school, notice to guardian: RCW 13.04.053.*

*consent required to remove from custody, exceptions: RCW 13.04.140.*

*estate or property rights of child not affected by guardian appointed under: RCW 13.04.110.*

*individual or association to act as guardian when child placed in care of: RCW 13.04.110.*

*institutional placement or transfer, notice to guardian: RCW 13.04.190.*

*liability of guardian for support: RCW 13.04.105.*

*Limitation of actions by ward against guardian, recovery of real estate sold by guardian: RCW 4.16.070.*

*Mental illness, involuntary hospitalization, applications a probate matter: RCW 71.02.110.*

*Mental illness, proceedings: Chapter 71.02 RCW.*

*Minor's personal service contracts, recovery by guardian barred: RCW 26.28.050.*

*Motor vehicle financial responsibility, release by injured minor executed by guardian: RCW 46.29.120.*

*Name, action for change of: RCW 4.24.130.*

*Partition: Chapter 7.52 RCW.*

*Public assistance grants, appointment of guardian to receive: RCW 74.08.280, 74.12.250.*

*Real estate licenses, guardian exemption: RCW 18.85.110.*

*Savings and loan association, guardian may be member of: RCW 33.20.060.*

*Seduction, action for seduction of ward: RCW 4.24.020.*

*State hospital patients, superintendent custodian of estate: RCW 72.23.230.*

*Uniform veterans' guardianship act: Chapter 73.36 RCW.*

*Veterans' estates, appointment of secretary of social and health services as guardian: RCW 73.04.130.*

*Volunteer firemen's relief, appointment of guardian for fireman: RCW 41.24.140.*

*Washington uniform gifts to minors act: Chapter 21.24 RCW.*

*Witness, guardian as: RCW 5.60.030.*

**11.88.010 Authority to appoint.** The superior court of each county shall have power to appoint guardians for the persons and estates, or either thereof, of incompetent persons resident of the county, and guardians for the estates of all such persons who are nonresidents of the state but who have property in such county needing care and attention.

An "incompetent" is any person who is either

(1) Under the age of majority, as defined in RCW 11.92.010, or

(2) Incapable by reason of insanity, mental illness, imbecility, idiocy, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his property or caring for himself or both. [1965 c 145 § 11.88.010. Prior: 1917 c 156 § 195; RRS § 1565; prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15 § 1.]

**11.88.020 Qualifications.** Any suitable person over the age of eighteen years, or any parent under the age of eighteen years may, if not otherwise disqualified, be appointed guardian of the person and/or the estate of an incompetent; any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian of the estate of an incompetent. No person is qualified to serve as a domiciliary guardian who is

(1) under eighteen years of age except as otherwise provided herein;

(2) of unsound mind;

(3) convicted of a felony or of a misdemeanor involving moral turpitude;

(4) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(5) a corporation not authorized to act as a fiduciary in the state;

(6) a person whom the court finds unsuitable. [1971 c 28 § 4; 1965 c 145 § 11.88.020. Prior: 1917 c 156 § 196; RRS § 1566.]

*Banks and trust companies may act as guardian: RCW 11.36.010.*

**11.88.030 Petition—Contents.** Any interested person may file a petition for the appointment of himself or some other qualified person as guardian of an incompetent. Such petition shall state:

(1) The name, age, residence and post office address of the incompetent;

(2) The nature of his incapacity in accordance with RCW 11.88.010;

(3) The approximate value and description of his property, including any compensation, pension, insurance or allowance to which he may be entitled;

(4) Whether there is, in any state, a guardian for the person or estate of the incompetent;

(5) The residence and post office address of the person whom petitioner asks to be appointed guardian;

(6) The names and addresses, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the incompetent;

(7) The name and address of the person or institution having the care and custody of the incompetent;

(8) The reason why the appointment of a guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian of the person, the estate, or both. [1965 c 145 § 11.88.030. Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

**11.88.040 Notice and hearing, when required—Service.** Before appointing a guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee only, or by personal service in the manner provided for service of summons, to the following:

(1) The incompetent or minor, if over fourteen years of age;

(2) A parent, if the incompetent is a minor, and the spouse of the incompetent if any;

(3) Any other person who has been appointed as guardian, or the person having the care and custody of the incompetent, if any. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or have waived notice of the hearing. If the petition is by a parent asking for his appointment as guardian of a minor child under the age of fourteen years, or if the petition be accompanied by the written consent of a minor of the age of fourteen years or upward, consenting to the appointment of the guardian asked for, or if the petition be by a nonresident guardian of any minor or incompetent, then the

court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given. It shall not be necessary that the person for whom guardianship is sought shall be represented by a guardian ad litem in the proceedings. [1969 c 70 § 1; 1965 c 145 § 11.88.040. Prior: 1927 c 170 § 2; 1923 c 142 § 4; 1917 c 156 § 198; RRS § 1568; prior: 1909 c 118 § 2; 1903 c 130 §§ 2, 3.]

*Waiver of notice: RCW 11.16.083.*

**11.88.080 Testamentary guardians.** When either parent is deceased, the surviving parent of any minor child may, by his last will in writing appoint a guardian or guardians of the person, or of the estate or both, of his minor child, whether born at the time of making such will or afterwards, to continue during the minority of such child or for any less time, and every such testamentary guardian of the estate of such child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and RCW 11.88.110, and he shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed as aforesaid. [1965 c 145 § 11.88.080. Prior: 1917 c 156 § 210; RRS § 1580; prior: Code 1881 § 1618; 1860 p 228 § 335.]

**11.88.090 Guardian ad litem.** Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170 and 11.92.180 shall affect or impair the power of any court to appoint a guardian to defend the interests of any incompetent person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf. [1965 c 145 § 11.88.090. Prior: 1917 c 156 § 211; RRS § 1581; prior: Code 1881 § 1619; 1873 p 318 § 314; 1860 p 228 § 336.]

**Rules of court:**

*Discipline of attorneys: DRA 4.1.*

*Settlement of claims of minors: SPR 98.16W.*

*Adoption from minor parent, guardian ad litem appointed for: RCW 26.32.070.*

*Award in lieu of homestead, appointment for minor children or incompetents: RCW 11.52.014.*

*Commercial waterway district improvement proceedings: RCW 91.04.350.*

*Costs against guardian of infant plaintiff: RCW 4.84.140.*

*Eminent domain proceedings by cities, guardian ad litem appointed for infants or mentally ill: RCW 8.12.180.*

*Execution against for costs against infant plaintiff: RCW 4.84.140.*

*Family allowances in probate of property, appointment of guardian ad litem for minor children or incompetents of deceased: Chapter 11.52 RCW.*

*Homestead, awarding to survivor, guardian ad litem appointed for minor children or incompetents of deceased: RCW 11.52.020.*

**Insane persons**

*appearance in civil action: RCW 4.08.060.*

*appointment for civil actions: RCW 4.08.060.*

*Justice of the peace, guardian ad litem if defendant minor, appointment of: RCW 12.04.150.*

*Liability for costs against infant plaintiffs: RCW 4.84.140.*

**Minors, for**

*appearance in civil actions: RCW 4.08.050.*

*appointment for civil actions: 4.08.050 RCW.*

*justice court proceedings: RCW 12.04.150.*

*Registration of land titles, appointment for minors: RCW 65.12.145.*

**11.88.100 Oath and bond of guardian.** Before letters of guardianship are issued, each guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian for C.D., shall faithfully discharge the office and trust of such guardian according to law and shall render a fair and just account of his guardianship to the superior court of the county of \_\_\_\_\_, from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incompetent person, or his or her property, and render and pay to such incompetent person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian, at such time and in such manner as the court may order or adjudge, then this obligation shall be void, otherwise to be and remain in full force and effect.

The bond shall be for the use of the incompetent person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given. [1965 c 145 § 11.88.100. Prior: 1961 c 155 § 1; 1951 c 242 § 1; 1947 c 145 § 1; 1945 c 41 § 1; 1917 c 156 § 203; Rem. Supp. 1947 § 1573; prior: 1905 c 17 § 1; Code 1881 § 1612; 1860 p 226 § 329.]

*Citation of surety on bond: RCW 11.92.056.*

*Suretyship: Chapter 19.72 RCW.*

**11.88.105 Reduction in amount of bond.** In cases where all or a portion of the estate consisting of cash or securities or both, has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and a receipt is filed by the guardian in court therefor stating that such corporations hold the same subject to order of court then in such case the court may in its discretion dispense with the giving of a bond or reduce the same by the amount of such deposits of cash or securities, and may order that no further reports by said guardian be required until such time as the guardian desires to withdraw such funds or change the investment thereof. [1965 c 145 § 11.88.105.]

**11.88.107 When bond may be dispensed with.** In all cases where a bank or trust company, authorized to act as guardian, is appointed as guardian, or acts as guardian under an appointment as such heretofore made, no bond shall be required. [1965 c 145 § 11.88.107.]

**11.88.110 Law on executors' and administrators' bonds applicable.** All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians. [1965 c 145 § 11.88.110. Prior: 1917 c 156 § 204; RRS § 1574; prior: Code 1881 § 1617; 1860 p 228 § 334.]

*Bond of personal representative: RCW 11.28.180.*

**11.88.115 Notice to tax commission.** Duty of guardian to notify tax commission; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

**11.88.120 Procedure on removal or death of guardian—Delivery of estate to successor.** The court in all cases shall have power to remove guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as prescribed in RCW 11.88.100; and when any guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian removed to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such incompetent person, which may be in the possession of such guardian so removed, or of the personal representatives of a deceased guardian, or in the possession of any other person or persons, and upon failure, to commit the party offending to prison, until he complies with the order of the court. [1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

**11.88.130 Transfer of jurisdiction and venue.** The court of any county having jurisdiction of any guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship proceeding to the court of any other county of the state upon application of the guardian and such notice to an incompetent or other interested party as the court may require. Such transfers of guardianship proceedings shall be made to the court of a county wherein either the guardian or incompetent resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred. [1965 c 145 § 11.88.130. Prior: 1955 c 45 § 1.]

**11.88.140 Termination of guardianship.** (1) *Termination without court order.* A guardianship is terminated

(a) Upon the attainment of full and legal age, as defined in RCW 11.92.010, of any person defined as an incompetent pursuant to RCW 11.88.010 solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding.

(b) By an adjudication of competency.

(c) By the death of the incompetent.

(2) *Termination on court order.* A guardianship may be terminated by court order after such notice as the court may require

(a) If the guardianship is of the estate and the estate is exhausted;

(b) If the guardianship is no longer necessary for any other reason.

(3) *Effect of termination.* When a guardianship terminates otherwise than by the death of the incompetent, the powers of the guardian cease, except that a guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incompetent, and for expenses of administration. When a guardianship terminates by death of the incompetent, the guardian of the estate may proceed under RCW 11.88.150, but the rights of all creditors against the incompetent's estate shall be determined by the law of decedents' estates. [1965 c 145 § 11.88.140.]

*Procedure on removal or death of guardian:* RCW 11.88.120.

*Settlement of estate upon termination other than by death intestate:* RCW 11.92.053.

**11.88.150 Administration of deceased incompetent's estate.** Upon the death of an incompetent intestate the guardian of his estate has power under the letters issued to him and subject to the direction of the court to administer the estate as the estate of the deceased incompetent without further letters unless within forty days after death of the incompetent a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian elects to administer the estate under his letters of guardianship, he shall petition the court for an order transferring the guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which is assigned to the guardianship proceeding. The guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's final account. This notice shall be published in the manner provided in RCW 11.40.010, once each week for three successive weeks, with proof by affidavit of the publication of such notice to be filed with the court. All claims which are not filed within four months after first publication shall be barred against the estate. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's bond shall continue until exonerated on

settlement of his account, and may apply to the complete administration of the estate of the deceased incompetent with the consent of the surety. If letters of administration or letters testamentary are granted upon petition filed within forty days after the death of the incompetent, the personal representative shall supersede the guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims. [1965 c 145 § 11.88.150.]

*Settlement of estate upon termination other than by death intestate:* RCW 11.92.053.

## Chapter 11.92

### GUARDIANSHIP—POWERS AND DUTIES OF GUARDIAN

#### Sections

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**11.92.010 Guardians under court control—Legal age.** Guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of chapters 11.88 and 11.92 RCW, all persons shall be of full and legal age when they shall be eighteen years old. [1971 c 28 § 5; 1965 c 145 § 11.92.010. Prior: 1923 c 72 § 1; 1917 c 156 § 202; RRS § 1572. Formerly RCW 11.92.010 and 11.92.020.]

*Age of majority:* RCW 26.28.010.

*Married female of full age:* RCW 26.28.020.

*Termination of guardianship upon attainment of legal age:* RCW 11.88.140.

*Transfer of jurisdiction and venue:* RCW 11.88.130.

**11.92.035 Claims.** (1) *Duty of guardian to pay.* A guardian of the estate is under a duty to pay from the estate all just claims against the estate of his incompetent, whether they constitute liabilities of the incompetent which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incompetent or his estate and whether arising in contract or in tort or otherwise, upon allowance of the

claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude his personal liability for his own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to prior claims for the care, maintenance and education of the incompetent and of his dependents and existing claims for expenses of administration over other claims.

(2) *Claims may be presented.* Any person having a claim against the estate of an incompetent, or against the guardian of his estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations, and, upon proof thereof, procure an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed. [1965 c 145 § 11.92.035.]

*Actions against guardian: RCW 11.92.060.*

*Claims against estate of deceased incompetent: RCW 11.88.150.*

*Disbursement for claims on termination of guardianship: RCW 11.88.140.*

**11.92.040 Duties of guardian in general.** It shall be the duty of the guardian

(1) To make out and file within three months after his appointment a verified inventory of all the property of the incompetent which shall come to his possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

(2) Unless otherwise directed by the court, to file with the court annually within thirty days after the anniversary date of his appointment, and also within thirty days after termination of his appointment, a written verified account of his administration.

(3) If he is a guardian of the person, to care for and maintain the incompetent, and if the incompetent is a minor, to see that the incompetent is properly trained and educated and that the incompetent has the opportunity to learn a trade, occupation or profession. The guardian of the person may be required to report the condition of his incompetent to the court, at regular intervals or otherwise as the court may direct.

(4) If he is a guardian of the estate, to protect and preserve it, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required of him by law, and at the termination of the guardianship, to deliver the assets of the incompetent to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian to do anything that a trustee can do under the provisions of RCW 30.99.070 for periods not exceeding one year from the date of the order.

(5) To invest and reinvest the property of the incompetent in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 30.24 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional

interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian during a period of not exceeding one year following the date of the order to invest and reinvest as provided in chapter 30.24 RCW without further order of the court.

(b) If it is for the best interests of the incompetent that a specific property be used by the incompetent rather than sold and the proceeds invested, the court may so order.

(6) To apply to the court for an order authorizing any disbursement on behalf of the incompetent; provided, however, that the guardian of the estate, or the person, department, bureau, agency or charitable organization having the care and custody of an incompetent, may apply to the court for an order directing the guardian of the estate to pay to the person, department, bureau, agency or charitable organization having the care and custody of an incompetent, or if the guardian of the estate has the care and custody of the incompetent, directing the guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance and education of the incompetent and of his dependents. In proper cases, the court may order payment of amounts directly to the incompetent for his maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under such order of the court, the guardian of the estate is not bound to see to the application thereof. [1965 c 145 § 11.92.040. Prior: 1957 c 64 § 1; 1955 c 205 § 15; 1941 c 83 § 1; 1917 c 156 § 205; Rem. Supp. 1941 § 1575; prior: 1895 c 42 § 1; Code 1881 § 1614.]

*Compulsory school attendance law, duty to comply with: RCW 28A.27.010.*

*Part time schools duty of guardian to cover attendance: RCW 28A.28.100.*

**11.92.050 Intermediate accounts—Hearing—Order.** Upon the filing of any intermediate guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian may petition the court for an order settling his account with regard to any and all receipts, expenditures and investments made and acts done by the guardian to the date of said interim report. Upon such petition being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of such petition and require the service of the petition and a notice of such hearing as provided in RCW 11.88.040; and, in the event such a hearing be ordered, the court shall also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian of the estate and to advise the court thereon at said hearing, in writing. At such hearing on said report of

the guardian, if the court be satisfied that the actions of the guardian have been proper, and that the guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incompetent, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or within one year after said incompetent attains his majority any such interim account may be challenged by said incompetent on the ground of fraud. [1965 c 145 § 11.92.050. Prior: 1943 c 29 § 1; Rem. Supp. 1943 § 1575-1.]

**11.92.053 Settlement of estate upon termination other than by death intestate.** Within ninety days after the termination of a guardianship for any reason other than the death of the incompetent intestate, the guardian of the estate shall petition the court for an order settling his account as filed in accordance with RCW 11.92.040(2) with regard to any and all receipts, expenditures and investments made and acts done by the guardian to the date of said termination. Upon such petition being filed, the court shall set a date for the hearing of such petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to such petition or may appear at the time and place fixed for the hearing thereof and present his objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved.

At such hearing on said petition of the guardian, if the court be satisfied that the actions of the guardian have been proper, and that the guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incompetent, subject only to the right of appeal as upon a final order: *Provided*, That within one year after said incompetent attains his majority any such account may be challenged by said incompetent on the ground of fraud. [1965 c 145 § 11.92.053.]

*Administration of deceased incompetent's estate: RCW 11.88.150.*

*Procedure on removal or death of guardian—Delivery of estate to successor: RCW 11.88.120.*

*Termination of guardianship: RCW 11.88.140.*

**11.92.056 Citation of surety on bond.** If, at any hearing upon a petition to settle the account of any guardian, it shall appear to the court that said guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties in the manner provided by law for the service of summons in civil actions

and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian shall not be approved and the court shall find that said guardian is indebted to the incompetent in any amount, said court may thereupon enter final judgment against said guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions. [1965 c 145 § 11.92.056.]

**11.92.060 Guardian to represent incompetent—Compromise of claims.** (1) *Guardian may sue and be sued.* When there is a guardian of the estate, all actions between the incompetent or the guardian and third persons in which it is sought to charge or benefit the estate of the incompetent shall be prosecuted by or against the guardian of the estate as such. He shall represent the interests of the incompetent in the action and all process shall be served on him.

(2) *Joinder, amendment and substitution.* When the guardian of the estate is under personal liability for his own contracts and acts made and performed on behalf of the estate he may be sued both as guardian and in his personal capacity in the same action. Misnomer or the bringing of the action by or against the incompetent shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the incompetent before the appointment of a guardian of his estate, such guardian when appointed may be substituted as a party for the incompetent. If the appointment of the guardian of the estate is terminated, his successor may be substituted; if the incompetent dies, his personal representative may be substituted; if the incompetent becomes competent, he may be substituted.

(3) *Garnishment, attachment and execution.* When there is a guardian of the estate, the property and rights of action of the incompetent shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incompetent or the guardian of his estate as such.

(4) *Compromise by guardian.* Whenever it is proposed to compromise or settle any claim by or against the incompetent or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incompetent, may enter an order authorizing the settlement or compromise be made. [1965 c 145 § 11.92.060. Prior: 1917 c 156 § 206; RRS § 1576; prior: 1903 c 100 § 1; Code 1881 § 1611; 1860 p 226 § 328.]

*Rules of court: SPR 98.08W, 98.10W, 98.16W.*

*Action against guardian deemed claim: RCW 11.92.035.*

**11.92.090 Sale, exchange, lease, or mortgage of property.** Whenever it shall appear to the satisfaction of a court by the petition of any guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of such incompetent for the purpose of paying debts or for the care, support and education of such incompetent, or to redeem any property of such incompetent's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper. [1965 c 145 § 11.92.090. Prior: 1917 c 156 § 212; RRS § 1582; prior: Code 1881 § 1620; 1855 p 17 § 14.]

**11.92.100 Petition—Contents.** Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to such incompetent that has come to the knowledge or possession of such guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the incompetent's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the incompetent.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.

(8) The age of the incompetent, where and with whom residing.

(9) All other facts connected with the estate and condition of the incompetent necessary to enable the court to fully understand the same. If there is no personal estate belonging to such incompetent in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the application. [1965 c 145 § 11.92.100. Prior: 1917 c 156 § 213; RRS § 1583; prior: Code 1881 § 1621; 1860 p 228 § 338; 1855 p 17 § 15.]

**11.92.110 Law governing sales of real estate.** The order directing the sale of any of the real property of the estate of such incompetent shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs. [1965 c 145 § 11.92.110. Prior: 1917 c 156 § 214; RRS § 1524; prior: Code 1881 § 1623; 1860 p 229 § 340.]

**11.92.115 Return and confirmation of sale.** The guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incompetent and of his estate. In the case of a sale by negotiation the guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: *Provided*, That such confirmation date shall be at least ten days after such notice is published. [1965 c 145 § 11.92.115.]

**11.92.120 Confirmation conclusive.** No sale by any guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instrument of transfer may not be attacked for any purpose or any reason, except for fraud. [1965 c 145 § 11.92.120. Prior: 1917 c 156 § 215; RRS § 1585; prior: Code 1881 § 1625; 1860 p 229 § 343.]

**11.92.125 Broker's fee and closing expenses—Sale, exchange, mortgage or lease of real estate.** In connection with the sale, exchange, mortgage, lease or grant of easement or license in any property, the court may authorize the personal representative to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting title insurance, survey, revenue stamps and other necessary costs and expenses in connection therewith. [1965 c 145 § 11.92.125.]

**11.92.130 Performance of contracts.** If any person who is bound by contract in writing to perform shall become incompetent before making the performance, the court having jurisdiction of the guardianship of such property may, upon application of the guardian of such incompetent person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11.60 RCW. [1965 c 145 § 11.92.130. Prior: 1923 c 142 § 5; RRS § 1585a.]



**11.92.150 Request for special notice of proceedings.**

At any time after the issuance of letters of guardianship in the estate of any incompetent person, any person interested in said estate, or in such incompetent person, or any relative of such incompetent person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon such guardian, or upon the attorney for such guardian, and file with the clerk of the court wherein the administration of such guardianship estate is pending, a written request stating that special written notice is desired of any or all of the following matters, steps or proceedings in the administration of such estate:

(1) Filing of petition for sales, exchanges, leases, mortgages, or grants of easements, licenses or similar interests in any property of the estate.

(2) Filing of all intermediate or final accountings or accountings of any nature whatsoever.

(3) Petitions by the guardian for family allowances or allowances for the incompetent or any other allowance of every nature from the funds of the estate.

(4) Petitions for the investment of the funds of the estate.

(5) Petition to terminate guardianship or petition for adjudication of competency.

Such request for special written notice shall designate the name, address and post office address of the person upon whom such notice is to be served and no service shall be required under this section and RCW 11.92.160 other than in accordance with such designation unless and until a new designation shall have been made.

When any account, petition, or proceeding is filed in such estate of which special written notice is requested as herein provided, the court shall fix a time for hearing thereon which shall allow at least ten days for service of such notice before such hearing; and notice of such hearing shall be served upon the person designated in such written request at least ten days before the date fixed for such hearing. The service may be made by leaving a copy with the person designated, or his authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated. [1969 c 18 § 1; 1965 c 145 § 11.92.150. Prior: 1925 ex.s. c 104 § 1; RRS § 1586-1.]

**11.92.160 Citation for failure to file account or report.** Whenever any request for special written notice is served as provided in this section and RCW 11.92.150, the person making such request may, upon failure of any guardian for any incompetent person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts. [1965 c 145 § 11.92.160. Prior: 1925 ex.s. c 104 § 2; RRS § 1586-2.]

*Attorney's fee to contestant of erroneous account or report: RCW 11.76.070.*

**11.92.170 Removal of property of nonresident incompetent.** Whenever it is made to appear that it would be in the best interests of the incompetent, the court may order the transfer of property in this state to a guardian of the estate of the incompetent appointed in another jurisdiction. [1965 c 145 § 11.92.170. Prior: 1917 c 156 § 217; RRS § 1587; prior: Code 1881 § 1628; 1873 p 320 § 323.]

**11.92.180 Compensation and expenses of guardian—Attorney's fee.** A guardian shall be allowed such compensation for his services as guardian as the court shall deem just and reasonable. Additional compensation may be allowed for his necessary services as attorney and for other necessary services not required of a guardian. He may also be allowed compensation for necessary expenses in the administration of his trust, including reasonable attorney's fees if the employment of an attorney for the particular purpose is necessary. In all cases, compensation of the guardian and his expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or his attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian and for attorney's fees for services already performed. If the court finds that the guardian has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed. [1965 c 145 § 11.92.180. Prior: 1917 c 156 § 216; RRS § 1586; prior: Code 1881 § 1627; 1855 p 19 § 25.]

*Rules of court: SPR 98.12W.*

**11.92.185 Concealed or embezzled property—Proceedings for discovery.** The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of incompetents subject to administration under this title. [1965 c 145 § 11.92.185.]

*Embezzlement by guardian: RCW 9.54.010(3).*

## Chapter 11.94 POWER OF ATTORNEY

### Sections

|           |   |
|-----------|---|
| 11.94.010 | Designation—Authority—Effect of acts done—<br>Appointment of guardian, effect—Accounting. |
| 11.94.020 | Effect of death, disability or incompetence of principal—Acts without knowledge.          |

**11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting.** Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar

words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his guardian or heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if he were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency. [1974 1st ex.s. c 117 § 52.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

**11.94.020 Effect of death, disability or incompetence of principal—Acts without knowledge.** (1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by RCW 30.04.260, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of a showing of fraud or bad faith, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney. [1974 1st ex.s. c 117 § 53.]

**Application, construction—Severability—Effective date—1974 1st ex.s. c 117:** See RCW 11.02.080 and notes following.

## Chapter 11.96 APPEALS

### Sections

11.96.010 Appeals to supreme court or court of appeals.

[Title 11—p 62]

**11.96.010 Appeals to supreme court or court of appeals.** Any interested party may appeal to the supreme court or the court of appeals from any final order, judgment or decree of the court, and such appeals shall be in the manner and way provided by law for appeals in civil actions. [1971 c 81 § 53; 1965 c 145 § 11.96.010. Prior: 1917 c 156 § 221; RRS § 1591. Formerly RCW 11.16.040.]

*Rules of court: Rules on Appeal, Vol. 0, RCW.*

## Chapter 11.98 TRUSTS

### Sections

11.98.010 Violation of rule against perpetuities by instrument—Periods during which trust not invalid.  
11.98.020 Distribution of assets and vesting of interest during period trust not invalid.  
11.98.030 Distribution of assets at expiration of period.  
11.98.040 Effective date of creation of trust.  
11.98.050 Application of chapter.

**Reviser's note:** For a comprehensive list of other statutes relating to trusts, see chapter 30.99 RCW.

*Devises or bequests to trusts: RCW 11.12.250.*

**11.98.010 Violation of rule against perpetuities by instrument—Periods during which trust not invalid.** If any provision of an instrument creating a trust shall violate the rule against perpetuities, neither such provision nor any other provisions of the trust shall thereby be rendered invalid during any of the following periods:

(1) The twenty-one years following the effective date of the instrument.

(2) The period measured by any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such life or lives.

(3) The period measured by any portion of any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such portion of such life or lives; and

(4) The twenty-one years following the expiration of the periods specified in (2) and (3) above. [1965 c 145 § 11.98.010. Prior: 1959 c 146 § 1.]

**11.98.020 Distribution of assets and vesting of interest during period trust not invalid.** If, during any period in which an instrument creating a trust or any provision thereof is not to be rendered invalid by the rule against perpetuities, any of the trust assets should by the terms of the instrument become distributable or any beneficial interest therein should by the terms of the instrument become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument. [1965 c 145 § 11.98.020. Prior: 1959 c 146 § 2.]

**11.98.030 Distribution of assets at expiration of period.** If, at the expiration of any period in which an instrument creating a trust or any provision thereof is not to be rendered invalid by the rule against perpetuities, any of the trust assets have not by the terms of the trust instrument become distributable or vested, then such

assets shall be then distributed as the superior court having jurisdiction shall direct, giving effect to the general intent of the creator of the trust. [1965 c 145 § 11.98.030. Prior: 1959 c 146 § 3.]

**11.98.040 Effective date of creation of trust.** For the purposes of this chapter the effective date of an instrument purporting to create an irrevocable inter vivos trust shall be its date of delivery, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust shall be the date of the trustor's or testator's death. [1965 c 145 § 11.98.040. Prior: 1959 c 146 § 4.]

**11.98.050 Application of chapter.** The provisions hereof shall be applicable to any instrument purporting to create a trust regardless of the date such instrument shall bear, unless it has been previously adjudicated in the courts of this state. [1971 ex.s. c 229 § 1; 1965 c 145 § 11.98.050. Prior: 1959 c 146 § 5.]

**Effective date—1959 c 146:** The effective date of 1959 c 146, herein reenacted by 1965 c 145 § 11.98.050, was midnight June 10, 1959, see preface 1959 session laws.

## Chapter 11.99 CONSTRUCTION

### Sections

|           |   |
|-----------|---|
| 11.99.010 | Effective date of title.                          |
| 11.99.013 | Title, chapter, section headings not part of law. |
| 11.99.015 | Repeal.   |
| 11.99.020 | Savings clause—Rights not affected.               |
| 11.99.030 | Severability—1965 c 145.                          |

**11.99.010 Effective date of title.** This title shall take effect and be in force on and after the first day of July, 1967; except that sections 11.44.055, 11.44.065, 11.44.070 and 11.44.080 shall take effect on July 1, 1965, and the repeal of the following acts or parts of acts as listed in section 11.99.015 shall also take effect on July 1, 1965, to wit: In subsection (10), section 1444, Code of 1881; in subsection (47), section 95, chapter 156, Laws of 1917; in subsection (48), section 1, chapter 23, Laws of 1919; in subsection (64), section 1, chapter 112, Laws of 1929; in subsection (66), section 123, chapter 180, Laws of 1935; in subsection (71), section 8, chapter 202, Laws of 1939; and in subsection (111), section 83.16-.040, chapter 15, Laws of 1961. Except as above provided the procedures herein prescribed shall govern all proceedings in probate brought after the effective date of the title and, also, all further procedure and proceedings in probate then pending, except to the extent that in the opinion of the court their application in particular proceedings or part thereof would not be feasible or would work injustice, in which event the former procedure shall apply. [1965 c 145 § 11.99.010.]

**11.99.013 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1965 c 145 § 11.99.013.]

**11.99.015 Repeal.** The following acts or parts of acts are repealed:

- (1) Sections 1 and 2, page 53, Laws of 1875 entitled *An Act In relation to the duties of probate judges.*
- (2) Sections 1 through 18, pages 53 through 59, Laws of 1875.
- (3) Section 1, page 127, Laws of 1875.
- (4) Sections 626 through 637, chapter 49, page 130, Laws of 1877.
- (5) Sections 721 through 729, chapter LVIII, page 145, Laws of 1877.
- (6) Sections 1 and 2, page 284, Laws of 1877.
- (7) Sections 12 and 13, pages 78 and 79, Laws of 1879.
- (8) Sections 623 through 634, chapter LII, Code of 1881.
- (9) Sections 717 through 724, chapter LXI, Code of 1881.
- (10) Sections 1297 through 1666, chapter XCV through CXI, Code of 1881.
- (11) Sections 1667 through 1670, chapter CXII, Code of 1881.
- (12) Sections 1678 through 1680, chapter CXIV, Code of 1881.
- (13) Sections 1681 through 1686, chapter CXV, Laws of 1881.
- (14) Section 2138, chapter CLV, Code of 1881.
- (15) Sections 2411, 2412 and 2414, chapter CLXXXIII, Laws of 1881.
- (16) Sections 3302 through 3315, chapter CCLIII, Laws of 1881.
- (17) Sections 3316 and 3317, chapter CCLIV, Code of 1881.
- (18) Section 1, page 29, Laws of 1883.
- (19) Sections 1 through 4, page 57, Laws of 1883.
- (20) Sections 1 through 3, page 165, Laws of 1885 entitled *An Act To abolish the right of survivorship in estates held in joint tenancy.*
- (21) Sections 1 through 3, pages 170 and 177, Laws of 1885.
- (22) Chapter 99, page 185, Laws of 1887.
- (23) Chapter 100, page 186, Laws of 1887.
- (24) Chapter 101, page 187, Laws of 1887.
- (25) Sections 2 and 3, page 82, Laws of 1889.
- (26) Sections 14 and 15, chapter 54, Laws of 1891.
- (27) Chapter 86, Laws of 1891.
- (28) Sections 1 through 49, chapter 155, Laws of 1891.
- (29) Chapter 32, Laws of 1893.
- (30) Chapter 54, Laws of 1893.
- (31) Sections 1 through 9, chapter 120, Laws of 1893.
- (32) Chapter 42, Laws of 1895.
- (33) Chapter 105, Laws of 1895.
- (34) Chapter 157, Laws of 1895.
- (35) Chapter 22, Laws of 1897.
- (36) Chapter 25, Laws of 1897.
- (37) Chapter 75, Laws of 1897.
- (38) Chapter 98, Laws of 1897.
- (39) Chapter 100, Laws of 1903.
- (40) Chapter 130, Laws of 1903.
- (41) Chapter 17, Laws of 1905.
- (42) Chapter 50, Laws of 1907.

- (43) Chapter 133, Laws of 1907.
- (44) Chapter 118, Laws of 1909.
- (45) Chapter 8, Laws of 1911.
- (46) Chapter 39, Laws of 1915.
- (47) Sections 1, 3 through 56, 58 through 71, and 73 through 221, chapter 156, Laws of 1917.
- (48) Chapter 23, Laws of 1919.
- (49) Chapter 31, Laws of 1919.
- (50) Chapter 197, Laws of 1919.
- (51) Chapter 93, Laws of 1921.
- (52) Section 1, chapter 72, Laws of 1923.
- (53) Chapter 113, Laws of 1923.
- (54) Chapter 142, Laws of 1923.
- (55) Chapter 80, Laws of 1925 extraordinary session.
- (56) Chapter 104, Laws of 1925 extraordinary session.
- (57) Chapter 76, Laws of 1927.
- (58) Chapter 91, Laws of 1927.
- (59) Chapter 104, Laws of 1927.
- (60) Chapter 160, Laws of 1927.
- (61) Sections 1 through 3, chapter 170, Laws of 1927.
- (62) Section 1, chapter 185, Laws of 1927.
- (63) Section 1, chapter 21, Laws of 1929.
- (64) Chapter 112, Laws of 1929.
- (65) Chapter 218, Laws of 1929.
- (66) Section 123, chapter 180, Laws of 1935.
- (67) Chapter 28, Laws of 1937.
- (68) Chapter 151, Laws of 1937.
- (69) Chapter 26, Laws of 1939.
- (70) Chapter 132, Laws of 1939.
- (71) Section 8, chapter 202, Laws of 1939.
- (72) Sections 1 and 2, chapter 206, Laws of 1941.
- (73) Chapter 83, Laws of 1941.
- (74) Chapter 14, Laws of 1943.
- (75) Chapter 29, Laws of 1943.
- (76) Chapter 113, Laws of 1943.
- (77) Chapter 193, Laws of 1943.
- (78) Chapter 219, Laws of 1943.
- (79) Chapter 39, Laws of 1945.
- (80) Chapter 41, Laws of 1945.
- (81) Chapter 72, Laws of 1945.
- (82) Chapter 197, Laws of 1945.
- (83) Chapter 198, Laws of 1945.
- (84) Chapter 44, Laws of 1947.
- (85) Chapter 54, Laws of 1947.
- (86) Chapter 145, Laws of 1947.
- (87) Chapter 11, Laws of 1949.
- (88) Chapter 102, Laws of 1949.
- (89) Sections 1 through 3, chapter 138, Laws of 1951.
- (90) Sections 1 through 6, chapter 197, Laws of 1951.
- (91) Chapter 242, Laws of 1951.
- (92) Chapter 264, Laws of 1951.
- (93) Section 2, chapter 270, Laws of 1953.
- (94) Chapter 45, Laws of 1955.
- (95) Chapter 98, Laws of 1955.
- (96) Chapter 141, Laws of 1955.
- (97) Chapter 154, Laws of 1955.
- (98) Chapter 205, Laws of 1955.
- (99) Chapter 254, Laws of 1955.
- (100) Chapter 7, Laws of 1955 extraordinary session.
- (101) Chapter 64, Laws of 1957.
- (102) Chapter 125, Laws of 1957.
- (103) Chapter 43, Laws of 1959.

- (104) Chapter 116, Laws of 1959.
- (105) Chapter 146, Laws of 1959.
- (106) Chapter 240, Laws of 1959.
- (107) Chapter 155, Laws of 1961.
- (108) Chapter 43, Laws of 1963.
- (109) Chapter 46, Laws of 1963.
- (110) Chapter 185, Laws of 1963.
- (111) Section 83.16.040, chapter 15, Laws of 1961. [1965 c 145 § 11.99.015.]

**11.99.020 Savings clause—Rights not affected.** No act done in any proceeding commenced before this title takes effect and no accrued right shall be impaired by its provisions. When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute in force before this title takes effect, such provisions shall remain in force and be deemed a part of this code with respect to such right. [1965 c 145 § 11.99.020.]

**11.99.030 Severability—1965 c 145.** If any provisions of this title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and, to this end, provisions of this title are declared to be severable. [1965 c 145 § 11.99.030.]

#### Chapter 11.104

#### WASHINGTON PRINCIPAL AND INCOME ACT

##### Sections

- 11.104.010 Definitions.
- 11.104.020 Duty of trustee as to receipts and expenditures.
- 11.104.030 Income—Principal—Charges.
- 11.104.040 When right to income arises—Apportionment of income.
- 11.104.050 Income earned during administration of a decedent's estate.
- 11.104.060 Corporate distribution.
- 11.104.070 Bond premium and discount.
- 11.104.080 Trade, business and farming operations.
- 11.104.090 Disposition of natural resources.
- 11.104.100 Timber.
- 11.104.110 Other property subject to depletion.
- 11.104.120 Underproductive property.
- 11.104.130 Charges against income and principal.
- 11.104.900 Application of chapter.
- 11.104.910 Short title.
- 11.104.920 Severability—1971 c 74.
- 11.104.930 Section headings not part of law.
- 11.104.940 Effective date—1971 c 74.

**11.104.010 Definitions.** As used in this chapter:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income;

(2) "Inventory value" means the cost of property purchased by the trustee and the cost or adjusted basis for federal income tax purposes of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use the value finally determined for the purposes of federal estate tax if applicable, otherwise for inheritance tax;

(3) "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal;

(4) "Trustee" means an original trustee and any successor or added trustee. [1971 c 74 § 1.]

**Reviser's note:** Throughout this chapter the term "this act" has been changed to "this chapter". "This act" [1971 c 74] consists of this chapter and the repeal of RCW 23.74.010 and 23.74.020.

**11.104.020 Duty of trustee as to receipts and expenditures.** (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this chapter;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this chapter; or

(c) if neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which men of prudence, discretion and intelligence would act in the management of their own affairs.

(2) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to a provision of this chapter. [1971 c 74 § 2.]

**11.104.030 Income—Principal—Charges.** (1) Income is the return in money or property derived from the use of principal, including:

(a) rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in RCW 11.104.070 on bond premium and bond discount;

(c) income earned during administration of a decedent's estate as provided in RCW 11.104.050;

(d) corporate distributions as provided in RCW 11.104.060;

(e) accrued increment on bonds or other obligations issued at discount as provided in RCW 11.104.070;

(f) receipts from business and farming operations as provided in RCW 11.104.080;

(g) receipts from disposition of natural resources as provided in RCW 11.104.090 and 11.104.100;

(h) receipts from other principal subject to depletion as provided in RCW 11.104.110; and

(i) receipts from disposition of underproductive property as provided in RCW 11.104.120.

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it

is held in trust eventually to be delivered to a remainderman while the return on or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

(a) consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in RCW 11.104.060;

(e) receipts from the disposition of corporate securities as provided in RCW 11.104.070;

(f) royalties and other receipts from disposition of natural resources as provided in RCW 11.104.090 and 11.104.100;

(g) receipts from other principal subject to depletion as provided in RCW 11.104.110;

(h) any profit resulting from any change in the form of principal except as provided in RCW 11.104.120 on underproductive property;

(i) receipts from disposition of underproductive property as provided in RCW 11.104.120; and

(j) any allowances for depreciation established under RCW 11.104.080 and 11.104.130(1)(b).

(3) After determining income and principal in accordance with the terms of the trust instrument or of this chapter, the trustee shall charge to income or principal expenses and other charges as provided in RCW 11.104.130. [1971 c 74 § 3.]

**11.104.040 When right to income arises—Apportionment of income.** (1) An income beneficiary is entitled to income from the date specified in the trust instrument, or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

(2) In the administration of a decedent's estate or an asset becoming subject to a trust by reason of a will:

(a) receipts due but not paid at the date of death of the testator are principal; and

(b) receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

(3) In all other cases, any receipt from an income producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

(4) On the termination of an income beneficiary's income interest, income earned but not distributed shall

be held and distributed as part of the next eventual interest or estate in accordance with the provisions of the will or trust relating to such next eventual interest or estate; except, this shall not apply to any marital deduction income interest as provided in section 2056 (and as amended or reenacted) of the Internal Revenue Code of the United States.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution, or if no date is fixed, on the date of declaration of the distribution by the corporation. [1971 c 74 § 4.]

**11.104.050 Income earned during administration of a decedent's estate.** (1) Unless the will otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest due at death and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trust under this chapter and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and appropriate portions of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration; and

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate at times of distribution.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust. [1971 c 74 § 5.]

**11.104.060 Corporate distribution.** (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued

since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1), (2), and (3) all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this chapter concerning the source or character of dividends or distributions of corporate assets. [1971 c 74 § 6.]

**11.104.070 Bond premium and discount.** (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. The trustee shall not make provision for amortization of bond premiums or for accumulation of discount except where the trust instrument provides otherwise. If the instrument provides for amortization of premiums or accumulation of discount, but not both, and is silent as to one, it shall be the duty of the trustee to amortize premiums and accumulate discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. Except as otherwise provided in RCW 11.104.040(4), the increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available

or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized. [1971 c 74 § 7.]

**11.104.080 Trade, business and farming operations.** If a trustee uses any part of the principal in the operation of a trade, business or farming operation, the proceeds and losses of the business shall be allocated in accordance with what is reasonable and equitable in view of the interest of those entitled to income as well as those entitled to principal, and in view of the manner in which men of prudence, discretion and intelligence would act in the management of their own affairs in accordance with RCW 11.104.020. The operation of real estate for rent is considered a business. [1971 c 74 § 8.]

**11.104.090 Disposition of natural resources.** (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) if received as rent on a lease or extension payments on a lease, the receipts are income;

(b) if received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income; and

(c) if received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. There shall be transferred to principal a portion of the gross receipts in the amount and to the extent deductible from federal taxation under taxing laws in existence at the time of receipt. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

(2) If a trustee, on January 1, 1972, held an item of depletable property of a type specified in this section, he shall allocate receipts from the property in the manner used before January 1, 1972, but as to all depletable property acquired after January 1, 1972 by an existing or new trust, the method of allocation provided herein shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses. [1971 c 74 § 9.]

**11.104.100 Timber.** If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with RCW 11.104.020. [1971 c 74 § 10.]

**11.104.110 Other property subject to depletion.** Except as provided in RCW 11.104.090 and 11.104.100, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of five percent per year of its inventory value, are income, and the balance is principal. [1971 c 74 § 11.]

**11.104.120 Underproductive property.** (1) Except as otherwise provided in this section, a portion of the net proceeds of sale of any part of principal which has not produced an average net income of at least one percent per year of its inventory value for more than a year (including as income the value of any beneficial use of the property by the income beneficiary) shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received in substitution for the property disposed of, less the expenses, including capital gains tax, if any, incurred in disposition and less any carrying charges paid while the property was underproductive.

(2) The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at four percent per year while the property was underproductive, would have produced the net proceeds. This sum, plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any beneficial use of the property by the income beneficiary, is income, and the balance is principal.

(3) Except as otherwise provided in RCW 11.104.040 (4), an income beneficiary is entitled to delayed income under this section as if it accrued from day to day during the time he was a beneficiary.

(4) If principal subject to this section is disposed of by conversion into property which cannot be apportioned easily, including land or mortgages (for example, realty acquired by or in lieu of foreclosure), the income beneficiary is entitled to the net income from any property or obligation into which the original principal is converted while the substituted property or obligation is held. If within five years after the conversion the substituted property has not been further converted into easily apportionable property, no allocation as provided in this section shall be made. [1971 c 74 § 12.]

**11.104.130 Charges against income and principal.** (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates,



premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee, interest paid by the trustee, and ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance shall be made for depreciation of that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on January 1, 1972 for which the trustee is not then making an allowance for depreciation;

(c) one-half of court costs, attorney's fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) one-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income; and

(f) any tax levied upon receipts defined as income under this chapter or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) The following charges shall be made against principal:

(a) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e), special compensation of trustees, expenses reasonably incurred in connection with principal, court costs and attorney's fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including the cost of investing and reinvesting principal, the payments on principal of an indebtedness (including a mortgage amortized by periodic payments of principal), expenses for preparation of property for rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but, a trustee may establish an allowance for depreciation out of income to the extent permitted by subsection (1)(b) and by RCW 11.104.080;

(d) any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the tax authority; and

(e) if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under RCW 11.104.040. [1971 c 74 § 13.]

**11.104.900 Application of chapter.** Except as specifically provided in the trust instrument or the will or in this chapter, this chapter shall apply to any receipt or expense received or incurred on or after January 1, 1972 by the estate of any decedent dying on or after January 1, 1972 or by any trust whether established before or after January 1, 1972 and whether the asset involved was acquired by the trustee before or after January 1, 1972. [1971 c 74 § 14.]

**11.104.910 Short title.** This chapter may be cited as the Washington Principal and Income Act. [1971 c 74 § 15.]

**11.104.920 Severability—1971 c 74.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are severable. [1971 c 74 § 16.]

**11.104.930 Section headings not part of law.** Section headings, as found in this 1971 amendatory act do not constitute any part of the law. [1971 c 74 § 18.]

**11.104.940 Effective date—1971 c 74.** This act shall take effect on January 1, 1972. [1971 c 74 § 19.]

# TITLE 12

## JUSTICE COURTS—CIVIL PROCEDURE

### Chapters

- 12.04 Commencement of actions.
- 12.08 Pleadings.
- 12.12 Trial.
- 12.16 Witnesses and depositions.
- 12.20 Judgments.
- 12.24 Execution of judgments.
- 12.28 Replevin.
- 12.36 Appeals.
- 12.40 Small claims.

*Attachment or levy upon security: RCW 62A.8-317.*  
*Garnishment: Chapter 7.33 RCW.*  
*General provisions regarding justices of the peace: Title 3 RCW.*  
*Jurisdiction of justice of the peace: State Constitution Art. 4 § 10 (Amendment 28).*  
*Justice without unnecessary delay: State Constitution Art. 1 § 10.*  
*Justices of the peace and other inferior courts—1961 Act: Chapter 3.30 RCW.*  
*Ne exeat, jurisdiction of justice of the peace: RCW 7.44.060.*  
*Removal of certain civil actions to superior court: Chapter 4.14 RCW.*  
*Rules for courts of limited jurisdiction: Volume 0.*

### Chapter 12.04 COMMENCEMENT OF ACTIONS

#### Sections

- 12.04.010 Civil actions, how commenced.
- 12.04.020 Action to recover debt—Summons—Service.
- 12.04.030 Action by complaint and notice.
- 12.04.040 Service of complaint and notice.
- 12.04.050 Process—Style—Who may serve.
- 12.04.060 Process—Service by constable or sheriff.
- 12.04.070 Process—Return—Fees.
- 12.04.080 Process—Service by person appointed by justice, return, exceptions.
- 12.04.090 Proof of service.
- 12.04.100 Service by publication.
- 12.04.110 Proof of service by publication.
- 12.04.120 Written admission as proof of service.
- 12.04.130 Jurisdiction, when acquired.
- 12.04.140 Action by person under eighteen years.
- 12.04.150 Action against defendant under eighteen years—Guardian ad litem.
- 12.04.160 Time for appearance.
- 12.04.170 Security for nonresident costs.
- 12.04.180 Cost bond in lieu of security.
- 12.04.190 Penalty for failure to execute process or false return.
- 12.04.200 Forms, or equivalents prescribed.
- 12.04.201 Form of subpoena.
- 12.04.203 Form of execution—Form of execution against principal and surety, after expiration of stay of execution.
- 12.04.204 Form of order in replevin.
- 12.04.205 Form of a writ of attachment.
- 12.04.206 Form of undertaking in replevin.
- 12.04.207 Form of undertaking in attachment—Form of undertaking to discharge attachment.

12.04.208 Form of undertaking to indemnify constable on claim of property by a third person.

**12.04.010 Civil actions, how commenced.** Civil actions in the several justices' courts of this state may be instituted either by the voluntary appearance and agreement of the parties, by the service of a summons, or by the service upon the defendant of a true copy of the complaint and notice, which notice shall be attached to the copy of the complaint and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six nor more than twenty days from the date of filing the complaint. [Code 1881 § 1712; 1873 p 335 § 19; 1860 p 245 § 26; RRS § 1755.]

**12.04.020 Action to recover debt—Summons—Service.** A party desiring to commence an action before a justice of the peace, for the recovery of a debt by summons, shall file his claim with the justice of the peace, verified by his own oath, or that of his agent or attorney, and thereupon the justice of the peace shall, on payment of his fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form, or as nearly as the case will admit, viz:

The State of Washington, }  
 ----- County. } ss.

To the sheriff or any constable of said county:

In the name of the state of Washington, you are hereby commanded to summon ----- if he (or they) be found in your county to be and appear before me at ----- on ---- day of ----- at ----- o'clock p.m. or a.m., to answer the complaint of ----- for a failure to pay him a certain demand, amounting to ----- dollars and ----- cents, upon ----- (here state briefly the nature of the claim) and of this writ make due service and return.

Given under my hand this ---- day of ----- 19--.

-----, Justice of the Peace.

And the summons shall specify a certain place, day and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff's claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his place of abode with some person over twelve years of

age, a true copy of such summons, certified by the officer to be such. [Code 1881 § 1713; 1873 p 335 § 20; 1860 p 245 § 29; RRS § 1758.]

**12.04.030 Action by complaint and notice.** Any person desiring to commence an action before a justice of the peace, by the service of a complaint and notice, can do so by filing his complaint verified by his own oath or that of his agent or attorney with the justice, and when such complaint is so filed, upon payment of his fees if demanded, the justice shall attach thereto a notice, which shall be substantially as follows:

The State of Washington, }  
----- County. } ss.

To -----

You are hereby notified to be and appear at my office in ----- on the ----- day of -----, 19--, at the hour of ----- M., to answer to the foregoing complaint or judgment will be taken against you as confessed and the prayer of the plaintiff granted.

Dated -----, 19--  
-----, J. P.

[Code 1881 § 1714; 1873 p 336 § 21; 1860 p 245 § 29; RRS § 1759.]

**12.04.040 Service of complaint and notice.** The complaint and notice shall be served at least five days before the time mentioned in the notice for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of the complaint and notice. [1925 ex.s. c 181 § 1; Code 1881 § 1715; 1873 p 337 § 22; RRS § 1761.]

**12.04.050 Process—Style—Who may serve.** All process issued by justices of the peace shall run in the name of the state of Washington, be dated the day issued and signed by the justice granting the same, and all executions and writs of attachment or of replevin shall be served by the sheriff or some constable of the county in which the justice resides, but a summons or notice and complaint may be served by any citizen of the state of Washington over the age of eighteen years and not a party to the action. [1971 ex.s. c 292 § 11; 1903 c 19 § 1; 1895 c 102 § 1; 1893 c 108 § 1; Code 1881 § 1716; 1873 p 337 § 23; RRS § 1762. Formerly RCW 12.04.050 and 12.04.060, part.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**12.04.060 Process—Service by constable or sheriff.** All process in actions and proceedings in justice courts, having a salaried constable, when served by an officer, shall be served by such constable or by the sheriff of the county or his duly appointed deputy; and all fees for such service shall be paid into the county treasury. [1909 c 132 § 1; RRS § 1760. FORMER PARTS OF SECTION: 1903 c 19 § 1, part, now codified in RCW 12.04.050.]

**12.04.070 Process—Return—Fees.** Every constable or sheriff serving process or complaint and notice shall return in writing, the time, manner and place of service and indorse thereon the legal fees therefor and shall sign his name to such return, and any person other than one of said officers serving summons or complaint and notice shall file with the justice his affidavit, stating the time, place and manner of the service of such summons or notice and complaint and shall indorse thereon the legal fees therefor. [1959 c 99 § 1; 1903 c 19 § 2; 1895 c 102 § 2; 1893 c 108 § 2; Code 1881 § 1717; 1873 p 337 § 24; 1860 p 246 § 37; 1854 p 229 § 31; RRS § 1763.]

**12.04.080 Process—Service by person appointed by justice, return, exceptions.** Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding, or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall indorse his fees for service thereon: *Provided*, It shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same: *Provided further*, That it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person eighteen years of age or over and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice. [1971 ex.s. c 292 § 12; 1903 c 19 § 3; Code 1881 § 1718; 1873 p 337 § 25; RRS § 1764.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**12.04.090 Proof of service.** Proof of service in either of the above cases shall be as follows: When made by a constable or sheriff his return signed by him and indorsed on the paper or process. When made by any person other than such officer, then by the affidavit of the person making the service. [Code 1881 § 1719; 1873 p 337 § 26; RRS § 1765.]

**12.04.100 Service by publication.** In case personal service cannot be had by reason of the absence of the defendant from the county in which the action is sought to be commenced, it shall be proper to publish the summons or notice with a brief statement of the object and prayer of the claim or complaint, in some weekly newspaper published in the county wherein the action is commenced; or if there is no paper published in such county, then in some newspaper published in the nearest adjoining county, which notice shall be published not less than once a week for three weeks prior to the time fixed for the hearing of the cause, which shall not be less than four weeks from the first publication of said notice.

Said notice may be substantially as follows:

The State of Washington, }  
 County of \_\_\_\_\_ } ss.

In justice's court, \_\_\_\_\_ justice.

To \_\_\_\_\_

You are hereby notified that \_\_\_\_\_ has filed a complaint (or claim as the case may be) against you in said court which will come on to be heard at my office in \_\_\_\_\_, in \_\_\_\_\_ county, state of Washington, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ m., and unless you appear and then and there answer, the same will be taken as confessed and the demand of the plaintiff granted. The object and demand of said claim (or complaint, as the case may be) is (here insert a brief statement).

Complaint filed \_\_\_\_\_, A.D. 19\_\_\_\_  
 \_\_\_\_\_, J. P.

[Code 1881 § 1720; 1873 p 337 § 27; RRS § 1766.]

*Legal publications: Chapter 65.16 RCW.*

**12.04.110 Proof of service by publication.** Proof of service, in case of publication, shall be the affidavit of the publisher, printer, foreman or principal clerk, showing the same. [Code 1881 § 1721; 1873 p 338 § 28; RRS § 1767.]

**12.04.120 Written admission as proof of service.** The written admission of the defendant, his agent or attorney, indorsed upon any summons, complaint and notice, or other paper, shall be complete proof of service in any case. [Code 1881 § 1722; 1873 p 338 § 29; RRS § 1768.]

**12.04.130 Jurisdiction, when acquired.** The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed, after completion of service, whether by publication or otherwise, and shall have control of all subsequent proceedings. [Code 1881 § 1723; 1873 p 338 § 30; RRS § 1769.]

**12.04.140 Action by person under eighteen years.** No action shall be commenced by any person under the age of eighteen years, except by his guardian, or until a next friend for such a person shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein. [1971 ex.s. c 292 § 75; Code 1881 § 1753; 1873 p 343 § 52; 1854 p 230 § 40; RRS § 1771.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**12.04.150 Action against defendant under eighteen years—Guardian ad litem.** After service and return of process against a defendant under the age of eighteen years, the action shall not be further prosecuted, until a guardian for such defendant shall have been appointed. Upon the request of such defendant, the justice shall

appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action. [1971 ex.s. c 292 § 76; Code 1881 § 1754; 1873 p 343 § 53; 1854 p 230 § 41; RRS § 1772.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**12.04.160 Time for appearance.** The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the summons or notice for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice being present, is actually engaged in the trial of another action or proceeding; in such case he may postpone the time of appearance until the close of such trial. [1957 c 89 § 1; Code 1881 § 1755; 1873 p 344 § 54; 1854 p 230 § 42; RRS § 1773.]

**12.04.170 Security for nonresident costs.** Whenever the plaintiff in an action, or in a garnishment or other proceeding is a nonresident of the county or begins such action or proceeding as the assignee of some other person, or of a firm or corporation, as to all causes of action sued upon, the justice may require of him security for the costs in the action or proceeding in a sum not exceeding fifty dollars, at the time of the commencement of the action, and after an action or proceeding has been commenced by such nonresident or assignee plaintiff, the defendant or garnishee defendant may require such security by motion; and all proceedings shall be stayed until such security has been given. [1929 c 102 § 1; 1905 c 10 § 1; Code 1881 § 1725; 1854 p 228 § 27; RRS § 1777.]

**12.04.180 Cost bond in lieu of security.** In lieu of separate security for each action or proceeding in any court, the plaintiff may cause to be executed and filed in the court a bond in the penal sum of fifty dollars running to the state of Washington, with surety approved by the court, and conditioned for the payment of all judgments for costs which may thereafter be rendered against him in that court. Any defendant or garnishee who shall thereafter recover a judgment for costs in said court against the principal on such bond shall likewise be entitled to judgment against the sureties. Such bond shall not be sufficient unless the penalty thereof is unimpaired by any outstanding obligation at the time of the commencement of the action. [1929 c 102 § 2; RRS § 1777 1/2.]

**12.04.190 Penalty for failure to execute process or false return.** If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the

party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action. [Code 1881 § 1752; 1873 p 343 § 51; 1854 p 230 § 39; RRS § 1776.]

**12.04.200 Forms, or equivalents prescribed.** The forms or equivalent forms as set forth in RCW 12.04-.201 through 12.04.208 may be used by justices of the peace, in civil actions and proceedings under this chapter. [1957 c 89 § 3. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

**12.04.201 Form of subpoena.**

FORM OF SUBPOENA

State of Washington, }  
County of \_\_\_\_\_, } ss.

To \_\_\_\_\_:

In the name of the state of Washington, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at his office in \_\_\_\_\_, to give evidence in a certain cause, then and there to be tried, between A B, plaintiff, and C D, defendant, on the part of (the plaintiff, or defendant as the case may be).

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

J. P., Justice of the Peace.

[1957 c 89 § 4. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

**12.04.203 Form of execution—Form of execution against principal and surety, after expiration of stay of execution.**

FORM OF EXECUTION

State of Washington, }  
County of \_\_\_\_\_, } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C D, for the sum of \_\_\_\_\_ dollars, and \_\_\_\_\_ dollars cost of suit, was recovered on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B. These are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B, for his debt, interests and costs.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

J. P., Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION

State of Washington, }  
County of \_\_\_\_\_, } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C D for the sum of \_\_\_\_\_ dollars, and for \_\_\_\_\_ dollars, costs of suit, was recovered on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and whereas, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, E F became surety to pay said judgment and costs, in \_\_\_\_\_ month from the date of the judgment aforesaid, agreeably to law, in the payment of which said C D and E F have failed; these are, therefore, in the name, etc., [as in the common form].

[1957 c 89 § 5. Prior: Code 1881 § 1895, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

**12.04.204 Form of order in replevin.**

FORM OF ORDER IN REPLEVIN

State of Washington, }  
County of \_\_\_\_\_, } ss.

To the sheriff or any constable of said county:

In the name of the state of Washington, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery, the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

J. P., Justice of the Peace.

[1957 c 89 § 6. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

**12.04.205 Form of a writ of attachment.**

FORM OF A WRIT OF ATTACHMENT

State of Washington, }  
County of \_\_\_\_\_, } ss.

To the sheriff or any constable of said county:

In the name of the state of Washington, you are commanded to attach, and safely keep, the goods and chattels, moneys, effects and credits of C D, (excepting such as the law exempts), or so much thereof as shall satisfy the sum of \_\_\_\_\_ dollars, with interest and cost of suit, in whosoever hands or possession the same may be found in your county, and to provide that the goods and chattels so attached may be subject to further proceeding thereon, as the law requires; and of this writ make legal service and due return.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
19...

J. P., Justice of the Peace.

[1957 c 89 § 7. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

#### 12.04.206 Form of undertaking in replevin.

##### FORM OF UNDERTAKING IN REPLEVIN

Whereas, A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for \_\_\_\_\_ county, against C D, defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to wit: [here set forth the property claimed]. Now, therefore we, A B, plaintiff, E F and G H, acknowledge ourselves bound unto C D in the sum of \_\_\_\_\_ dollars for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19... A B, E F, G H.

[1957 c 89 § 8. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

#### 12.04.207 Form of undertaking in attachment— Form of undertaking to discharge attachment.

##### FORM OF UNDERTAKING IN ATTACHMENT

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for \_\_\_\_\_ county, for a writ of attachment against the personal property of C D, defendant; Now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D in the sum of \_\_\_\_\_ dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment and not exceeding the sum of \_\_\_\_\_ dollars.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19... A B, E F.

##### FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for \_\_\_\_\_ county, against the personal property of C D, defendant, in an action in which A B is plaintiff; Now, therefore, we C D, defendant, E F, and G H, acknowledge ourselves bound unto J K, constable, in the sum of \_\_\_\_\_ dollars, [double the value of the property], engaging to deliver the property attached, to wit: [here set forth a list of articles attached], or pay the value thereof to the sheriff or constable, to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may be issued.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19... C D, E F, G H.

[1957 c 89 § 9. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 § 19, part; RRS § 1890, part.]

#### 12.04.208 Form of undertaking to indemnify constable on claim of property by a third person.

##### FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE ON CLAIM OF PROPERTY BY A THIRD PERSON

Whereas, L M, claims to be owner of, and have the right to possession of certain personal property, to wit: [here describe it] which has been taken by J K, constable in \_\_\_\_\_ county, upon an execution by J P, justice of the peace in and for the county of \_\_\_\_\_, upon a judgment obtained by A B, plaintiff, against C D, defendant; Now, therefore, we A B, plaintiff, E F, and G H, acknowledge ourselves bound unto the said J K, constable, in the sum of \_\_\_\_\_ dollars, to indemnify the said J K against such claim. A B, E F, G H.

[1957 c 89 § 10. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

### Chapter 12.08 PLEADINGS

#### Sections

|           |  |
|-----------|--|
| 12.08.010 | When pleadings take place.                 |
| 12.08.020 | What constitute pleadings.                 |
| 12.08.030 | Pleadings oral or written.                 |
| 12.08.040 | Docketing or filing.                       |
| 12.08.050 | Denial of knowledge or information—Effect. |
| 12.08.060 | Pleading account or instrument.            |
| 12.08.070 | Verification.                              |
| 12.08.080 | Uncontroverted allegations—Effect.         |
| 12.08.090 | Objections to pleadings—Amendment.         |
| 12.08.100 | Variance between pleading and proof.       |
| 12.08.110 | Amendments—Continuance.                    |
| 12.08.120 | Setoff, how pleaded.                       |

**12.08.010 When pleadings take place.** The pleadings in justice's court shall take place upon the appearance of the parties, unless they shall have been previously filed or unless the justice shall, for good cause shown, allow a longer time than the time of appearance. [Code 1881 § 1756; 1873 p 344 § 55; 1854 p 231 § 43; RRS § 1778.]

**12.08.020 What constitute pleadings.** The pleadings in the justice's court shall be:

(1) The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

(2) The answer of the defendant, which may contain a denial of the complaint, or any part thereof; and also a statement, in a plain and direct manner, of any facts constituting a defense.

(3) When the answer sets up a setoff, by way of defense, the reply of the plaintiff. [Code 1881 § 1757; 1873 p 344 § 56; 1854 p 231 § 44; RRS § 1779.]

**12.08.030 Pleadings oral or written.** The pleadings in justices' courts may be oral or in writing. [1957 c 89 § 11; Code 1881 § 1758; 1873 p 344 § 57; 1854 p 231 § 45; RRS § 1780.]

**12.08.040 Docketing or filing.** When the pleadings are oral, the substance of them shall be entered by the justice in his docket. When in writing they shall be filed in his office and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended. [Code 1881 § 1759; 1873 p 345 § 58; 1854 p 231 § 46; RRS § 1781.]

**12.08.050 Denial of knowledge or information—Effect.** A statement in an answer or reply, that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party to form a belief, shall be deemed equivalent to a denial. [Code 1881 § 1760; 1873 p 345 § 59; 1854 p 231 § 47; RRS § 1782.]

**12.08.060 Pleading account or instrument.** When the cause of action, or setoff, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or setoff. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being given in evidence. [Code 1881 § 1761; 1873 p 345 § 60; 1854 p 231 § 48; RRS § 1783.]

**12.08.070 Verification.** Every complaint, answer or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified. [Code 1881 § 1762; 1873 p 345 § 61; 1854 p 232 § 49; RRS § 1784.]

**12.08.080 Uncontroverted allegations—Effect.** Every material allegation in a complaint, or relating to a setoff in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case. [Code 1881 § 1763; 1873 p 345 § 62; 1854 p 232 § 50; RRS § 1785.]

**12.08.090 Objections to pleadings—Amendment.** Either party may object to a pleading by his adversary, or to any part thereof that is not sufficiently explicit for him to understand it, or that it contains no cause of action or defense although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to

amend, the defective pleading shall be disregarded. [Code 1881 § 1764; 1873 p 345 § 63; 1854 p 232 § 51; RRS § 1786.]

**12.08.100 Variance between pleading and proof.** A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby. [Code 1881 § 1765; 1873 p 346 § 64; 1854 p 232 § 52; RRS § 1787.]

**12.08.110 Amendments—Continuance.** The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions in the allegations or denials, necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party in consequence of such amendment, a continuance shall be granted. The court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party. [Code 1881 § 1766; 1873 p 346 § 65; 1854 p 232 § 53; RRS § 1788.]

**12.08.120 Setoff, how pleaded.** To entitle a defendant to any setoff he may have against the plaintiff, he must allege the same in his answer; and the statutes regulating setoffs in the superior court, shall in all respects be applicable to a setoff in a justice's court, if the amount claimed to be setoff, after deducting the amount found due to the plaintiff, be within the jurisdiction of the justice of the peace; judgment may, in like manner, be rendered by the justice in favor of the defendant, for the balance found due the plaintiff. [Code 1881 § 1767; 1873 p 346 § 66; 1854 p 232 § 54; RRS § 1789.]

## Chapter 12.12 TRIAL

| Sections  |                                      |
|-----------|--------------------------------------|
| 12.12.010 | Continuances limited.                |
| 12.12.020 | Trial by justice.                    |
| 12.12.030 | Jury—Number—Qualifications—Fee.      |
| 12.12.040 | Time of jury trial.                  |
| 12.12.050 | Selection of jury.                   |
| 12.12.060 | Summons for jurors.                  |
| 12.12.070 | Oath administered.                   |
| 12.12.080 | Delivery of verdict.                 |
| 12.12.090 | Discharge of jury.                   |
| 12.12.100 | Penalty for juror failing to appear. |

**12.12.010 Continuances limited.** When the pleadings of the party shall have taken place, the justice shall, upon the application of either party, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in



all other respects shall be governed by the law applicable to continuance in the superior court. [1957 c 89 § 12; Code 1881 § 1769; 1873 p 346 § 68; 1854 p 232 § 56; RRS § 1847.]

**12.12.020 Trial by justice.** Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly. [Code 1881 § 1782; 1873 p 350 § 81; 1854 p 237 § 82; RRS § 1848.]

**12.12.030 Jury—Number—Qualifications—Fee.** After the appearance of the defendant, and before the justice shall proceed to enquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful men having the qualifications of jurors in the superior court of the same county, unless the parties shall agree upon a less number; *provided*, that the party demanding the jury shall first pay to the justice the sum of six dollars, which shall be paid over by the justice to the jury before they are discharged, and said amount shall be taxed as costs against the losing party. [1888 p 118 § 1; Code 1881 § 1770; 1863 p 438 § 51; 1862 p 58 § 1; 1854 p 235 § 70; RRS § 1849.]

**12.12.040 Time of jury trial.** When a jury is demanded, the trial of the case must be adjourned until the time fixed for the return of the jury; if neither party desire an adjournment the time must be determined by the justice, and must be on the same day, or within the next two days. The jury must be immediately selected as herein provided. [1888 p 118 § 2; Code 1881 § 1771; 1854 p 235 § 71; RRS § 1850.]

**12.12.050 Selection of jury.** The justice shall write in a panel the names of eighteen persons, citizens of the county, from which the defendant, his agent or attorney, must strike one name; the plaintiff, his agent or attorney, one; and so on alternately until each party shall have stricken six names, and the remaining six names shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the name in behalf of such party. [1888 p 119 § 3; Code 1881 § 1772; 1854 p 235 § 72; RRS § 1851. Cf. Code 1881 §§ 1774, 1775.]

**12.12.060 Summons for jurors.** The justice shall thereupon issue a summons for the jury, in which the following form shall be observed in substance:

THE STATE OF WASHINGTON, }  
County of \_\_\_\_\_ } ss.  
The state of Washington to the Sheriff or any Constable of said county:  
You are hereby commanded to summon \_\_\_\_\_ to appear before me, at my office in \_\_\_\_\_ precinct, said county, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to serve as jurors in a case pending before me, then and there to be tried. And this they shall in nowise omit: And have you then and there this writ, with your doings thereon.

Given under my hand this, the \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_  
A \_\_\_\_\_ B \_\_\_\_\_  
Justice of the Peace.

Which summons shall be personally served upon the persons named, and the same shall be returned, with the names of the persons summoned, at the time appointed for the trial of the cause. [1888 p 119 § 4; Code 1881 § 1773; 1854 p 236 § 73; RRS § 1852.]

**12.12.070 Oath administered.** When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause. [Code 1881 § 1776; 1873 p 348 § 75; 1854 p 236 § 76; RRS § 1853.]

**12.12.080 Delivery of verdict.** When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket. [Code 1881 § 1777; 1873 p 348 § 76; 1854 p 236 § 77; RRS § 1854.]

**12.12.090 Discharge of jury.** Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce. [Code 1881 § 1778; 1873 p 348 § 77; 1854 p 236 § 78; RRS § 1855.]

**12.12.100 Penalty for juror failing to appear.** Every person who shall be duly summoned as a juror, and shall not appear nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars. [Code 1881 § 1779; 1873 p 348 § 78; 1854 p 236 § 79; RRS § 1856.]

**Chapter 12.16  
WITNESSES AND DEPOSITIONS**

- Sections
- 12.16.010 Witnesses may be subpoenaed if within twenty miles.
- 12.16.020 Service of subpoena.
- 12.16.030 Attachment for nonappearance.
- 12.16.040 Service of attachment—Fees.
- 12.16.050 Damages for nonappearance.
- 12.16.060 Party to action as adverse witness.
- 12.16.070 Testimony of party may be rebutted.
- 12.16.080 Procedure on party's refusal to testify.
- 12.16.090 Examination of party in his own behalf.
- 12.16.100 Depositions may be taken when.
- 12.16.110 How taken and certified.
- 12.16.120 Deposition, how used on trial.

*Oaths and affirmations: Chapter 5.28 RCW.*

**12.16.010 Witnesses may be subpoenaed if within twenty miles.** A subpoena issued by a justice of the peace shall be valid to compel the attendance of a witness in the justice's court, if such witness be within twenty miles of the place of trial. [Code 1881 § 1869; 1873 p 370 § 168; 1854 p 233 § 57; RRS § 1898.]

*Subpoena duces tecum: RCW 5.56.030.*

*Witnesses, attendance: RCW 5.56.010.*

**12.16.020 Service of subpoena.** A subpoena may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy at his usual place of abode. [Code 1881 § 1870; 1873 p 370 § 169; 1854 p 233 § 58; RRS § 1899.]

*Service of subpoena:* RCW 5.56.040.

**12.16.030 Attachment for nonappearance.** Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpoenaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have the power to issue an attachment to compel the attendance of such witness: *Provided*, That no attachment shall issue against a witness in any civil action, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena. [Code 1881 § 1871; 1873 p 370 § 170; 1854 p 233 § 59; RRS § 1900.]

*Attachment of a witness:* RCW 5.56.070.

*When witness must attend:* RCW 5.56.010.

**12.16.040 Service of attachment—Fees.** Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs. [Code 1881 § 1872; 1873 p 370 § 171; 1854 p 233 § 60; RRS § 1901.]

*Attachment, to whom directed—Execution:* RCW 5.56.080.

**12.16.050 Damages for nonappearance.** Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for all damages which such party may have sustained by reason of his nonappearance: *Provided*, That such witness had the fees allowed for mileage and one day's attendance paid, or tendered him, in advance, if demanded by him at the time of the service. [Code 1881 § 1873; 1873 p 371 § 172; 1854 p 234 § 61; RRS § 1902.]

*Result of failure to attend:* RCW 5.56.060, 5.56.061.

*Subpoena duces tecum:* RCW 5.56.030.

*When witness must attend:* RCW 5.56.010.

**12.16.060 Party to action as adverse witness.** A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken. [Code 1881 § 1874; 1873 p 371 § 173; 1854 p 234 § 62; RRS § 1903.]

*Party as witness:* RCW 5.04.010.

**12.16.070 Testimony of party may be rebutted.** The examination of a party thus taken, may be rebutted by adverse testimony. [Code 1881 § 1875; 1873 p 371 § 174; 1854 p 234 § 63; RRS § 1904.]

**12.16.080 Procedure on party's refusal to testify.** If a party refuse to attend and testify at the trial, or give his deposition before trial, when required, his complaint, answer or reply, may be stricken out, and judgment taken against him. [Code 1881 § 1876; 1873 p 371 § 175; 1854 p 234 § 64; RRS § 1905.]

*Penalty for failure to testify: Rules of court:* CR 43(f)(3).

**12.16.090 Examination of party in his own behalf.** A party examined by an adverse party may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received. [Code 1881 § 1877; 1873 p 371 § 176; 1854 p 234 § 65; RRS § 1906.]

**12.16.100 Depositions may be taken when.** Either party, in an action pending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial. [Code 1881 § 1878; 1873 p 371 § 177; 1854 p 234 § 66; RRS § 1907.]

*Depositions, generally: Rules of court:* CR 26–37.

*Depositions, perpetuating testimony: Rules of court:* CR 27.

*Interrogatories: Rules of court:* CR 31–33.

**12.16.110 How taken and certified.** The notice shall be served, and the deposition taken, certified, and returned, according to the law regulating the taking of depositions to be read in the superior court. [Code 1881 § 1879; 1873 p 371 § 178; 1854 p 234 § 67; RRS § 1908.]

*Depositions, generally: Rules of court:* CR 26–37.

*Depositions to perpetuate testimony: Rules of court:* CR 27.

*Interrogatories: Rules of court:* CR 31–33.

**12.16.120 Deposition, how used on trial.** The justice shall allow every deposition taken, certified and returned according to law, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice, that the witness, whose deposition is so offered:

(1) Is dead, or resides more than twenty miles from the place of trial; or,

(2) Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity.

(3) That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party offering the deposition. [Code 1881 § 1880; 1873 p 372 § 179; 1854 p 234 § 68; RRS § 1909.]

*Use of deposition: Rules of court: CR 26-37.*

## Chapter 12.20 JUDGMENTS

### Sections

|           |  |
|-----------|--|
| 12.20.010 | Judgment of dismissal.                       |
| 12.20.020 | Judgment by default.                         |
| 12.20.030 | Judgment on merits.                          |
| 12.20.040 | Tender—Effect of, on judgment.               |
| 12.20.050 | Setoff—Limitation of judgment.               |
| 12.20.060 | Judgment for costs—Attorney's fee.           |
| 12.20.070 | Proceedings where title to land is involved. |

*Proceedings supplemental to execution: RCW 6.32.230.*

**12.20.010 Judgment of dismissal.** Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

(1) When the plaintiff voluntarily dismisses the action before it is finally submitted.

(2) When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.

(3) When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county [precinct]; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal. [Code 1881 § 1780; 1873 p 348 § 79; 1863 p 349 § 61; 1854 p 236 § 80; RRS § 1857.]

*Election of justices: RCW 3.04.010.*

*Jurisdictional venue in justice courts, dismissal: RCW 3.20.060, 3.20.070.*

*Number of justices in cities: RCW 3.12.010, 3.12.021.*

*Territorial jurisdiction of justices: RCW 3.20.050, 3.20.090.*

**12.20.020 Judgment by default.** When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

(1) When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein;

(2) In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint.

(3) The justice shall have full power at any time after a judgment has been given by default for failure of the defendant to appear and plead at the proper time, to vacate and set aside said judgment for any good cause and upon such terms as he shall deem sufficient and proper. Such judgment shall only be set aside upon five days notice in writing served upon the plaintiff or the plaintiff's attorney and filed with the justice within ten days after the entry of the judgment. The justice shall hear the application to set aside such judgment either

upon affidavits or oral testimony as he may deem proper. In case such judgment is set aside the making of the application for setting the same aside shall be considered an entry of general appearance in the case by the applicant, and the case shall duly proceed to a trial upon the merits: *Provided*, That, no justice of the peace shall pay out or turn over money or property received by him by virtue of any default judgment until the expiration of the ten days for moving to set aside such default judgment has expired. [1915 c 41 § 1; Code 1881 § 1781; 1873 p 349 § 79; 1863 p 349 § 62; 1854 p 237 § 81; RRS § 1858.]

**12.20.030 Judgment on merits.** Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered within three days after the close of the trial. [1957 c 89 § 13; Code 1881 § 1783; 1873 p 350 § 82; 1854 p 237 § 83; RRS § 1859.]

**12.20.040 Tender—Effect of, on judgment.** If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with costs then accrued; but if he do not accept such offer before the trial, and fail to recover on the trial of the action, a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided. [Code 1881 § 1784; 1873 p 350 § 83; 1863 p 350 § 65; 1854 p 237 § 84; RRS § 1860.]

**12.20.050 Setoff—Limitation of judgment.** When the setoff of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case, the court shall not render judgment for any further sum in favor of the defendant. [Code 1881 § 1768; 1873 p 346 § 67; 1854 p 232 § 55; RRS § 1861.]

**12.20.060 Judgment for costs—Attorney's fee.** When the prevailing party is entitled to recover costs in a civil action before a justice of the peace, the justice shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the justice shall enter up a judgment in favor of the defendant for the amount of his costs; and in case any party so entitled to costs is represented in the action by an attorney, the justice shall include an attorney's fee of five dollars as part of the costs: *Provided, however*, That the plaintiff shall not be entitled to such attorney fee unless he obtain, exclusive of costs, a judgment in the sum of five dollars or more. [1915 c 43 § 1; 1893 c 12 § 1; Code 1881 § 1785; 1873 p 350 § 84; 1854 p 237 § 85; RRS § 1862.]

Attorney's fees as costs in damage actions of one thousand dollars or less: RCW 4.84.250-4.84.310.

12.20.070 Proceedings where title to land is involved. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the superior court of the county, a transcript of all the entries made in his docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the superior court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the cost shall abide the event of the suit. [Code 1881 § 1868; 1873 p 369 § 167; 1854 p 235 § 69; RRS § 1863.]

Chapter 12.24 EXECUTION OF JUDGMENTS

Sections

- 12.24.010 Stay of execution.
12.24.020 Stay bond.
12.24.030 Form of bond.
12.24.040 Stay of judgment revokes execution.
12.24.050 Levy of execution if judgment not paid.
12.24.060 Subrogation of surety.
12.24.070 Setoff of mutual judgments.
12.24.080 Setoff of judgment before another justice.
12.24.090 Execution for balance after setoff.
12.24.100 No execution after five years—Exception.
12.24.110 Execution issued by succeeding justice.
12.24.120 Execution in another county.
12.24.130 Execution, to whom directed—Contents.
12.24.140 Amount of judgment to be noted.
12.24.150 Renewal of execution.
12.24.160 Notice of sale upon execution.
12.24.170 Sale upon execution—Return.
12.24.180 Officer forbidden to purchase.
12.24.190 Execution for fees and costs.
12.24.200 Claim to property by third party.
12.24.210 Other remedies available to third party.

Proceedings supplemental to execution: RCW 6.32.230.

12.24.010 Stay of execution. The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party, and for the following periods of time, to be calculated from the date of the judgment:

- (1) If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month.
(2) If it be for more than twenty-five dollars, two months. [Code 1881 § 1786; 1873 p 350 § 85; 1854 p 238 § 86; RRS § 1867.]

12.24.020 Stay bond. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering of the judgment, enter into a bond, before the justice, to the adverse party, in a sufficient sum to secure the payment of the judgment and costs, conditioned to be void upon

such payment, at the expiration of the stay. [Code 1881 § 1787; 1873 p 351 § 86; 1854 p 238 § 87; RRS § 1868.]

12.24.030 Form of bond. Such bond shall be signed by the person entering into the same, and may be in the following form:

Whereas, A B, has obtained a judgment before J P, one of the justices of the peace in and for ----- county, on the ----- day of -----, 19--, against C D, for ----- dollars; now, therefore, I, E F, acknowledge myself bound to A B in the sum of ----- dollars; this bond to be void if such judgment shall be paid at the expiration of ----- month after the time it was rendered.

Dated the ----- day of -----, 19--. -----, E. F.

[Code 1881 § 1788; 1873 p 351 § 87; 1854 p 238 § 88; RRS § 1869.]

12.24.040 Stay of judgment revokes execution. If judgment be stayed in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with like effect as he is hereinafter directed to revoke an execution, after an appeal has been allowed. [1957 c 89 § 14; Code 1881 § 1791; 1873 p 352 § 90; 1854 p 238 § 91; RRS § 1872.]

12.24.050 Levy of execution if judgment not paid. If at the expiration of such stay, the judgment be not paid, the execution shall issue against both the principal and surety. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the surety, and in his return shall state what amount of money, collected by him on the execution, was collected from the surety, and the time when the same was received. [1957 c 89 § 15; Code 1881 § 1789; 1873 p 351 § 88; 1854 p 238 § 89; RRS § 1870.]

Corporate sureties: Chapter 48.28 RCW.

Personal sureties: Chapter 19.72 RCW.

12.24.060 Subrogation of surety. After the return of such execution, the surety shall be entitled, on application to the justice, to have the judgment, or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his use; and he may collect the same from the defendant by execution, together with the interest at the rate of twelve percent per annum. [1957 c 89 § 16; Code 1881 § 1790; 1873 p 351 § 89; 1854 p 238 § 90; RRS § 1871.]

12.24.070 Setoff of mutual judgments. If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, one may be set off against the other, by the justice before whom the judgment against which the setoff is proposed, may be. [Code 1881 § 1792; 1873 p 352 § 91; 1854 p 239 § 92; RRS § 1873.]

**12.24.080 Setoff of judgment before another justice.**

If the judgment proposed as a setoff was rendered before another justice, the party proposing such setoff shall produce before such justice a transcript of such judgment, upon which there is a certificate of the justice before whom such may be, that it is unsatisfied in whole or in part, and that there is no appeal, and that such transcript was obtained for the purpose of being set off against the judgment to which it is offered as a setoff. The justice granting such transcript shall make an entry thereof on his docket, and all further proceedings on such judgment shall be stayed, unless such transcript be returned with the proper justice's certificate thereon, that it has not been allowed in setoff. [Code 1881 § 1793; 1873 p 352 § 92; 1854 p 239 § 93; RRS § 1874.]

**12.24.090 Execution for balance after setoff.** If any justice shall set off one judgment against another, he shall make an entry thereof on his docket, and execution shall issue only for the balance which may be due after such setoff. If a justice shall allow a transcript of a judgment rendered by another justice to be set off, he shall file such transcript among the papers relating to the judgment in which it is allowed in setoff. If he shall refuse such transcript as a setoff, he shall so certify on the transcript, and return the same to the party who offered it. [Code 1881 § 1794; 1873 p 352 § 93; 1854 p 239 § 94; RRS § 1875.]

**12.24.100 No execution after five years—Exception.** Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, in the manner hereinbefore prescribed; but after the lapse of five years from the date of the judgment, no execution shall issue except by leave of the justice before whom such judgment may be, upon reasonable notice, to the defendant. [Code 1881 § 1795; 1873 p 352 § 94; 1854 p 240 § 95; RRS § 1876.]

**12.24.110 Execution issued by succeeding justice.** When any judgment shall have been rendered by any justice of the peace, and the same not be satisfied during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered shall issue execution upon such unsatisfied judgment in the same manner, and with like effect as if he himself had rendered the judgment. [Code 1881 § 1796; 1873 p 352 § 95; 1854 p 240 § 96; RRS § 1877.]

**12.24.120 Execution in another county.** If the defendant have not goods and chattels in the county in which judgment was rendered, sufficient to satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs as in other cases. [Code 1881 § 1797; 1873 p 352 § 96; 1854 p 240 § 97; RRS § 1878.]

**12.24.130 Execution, to whom directed—Contents.**

The execution shall be directed (except when it is otherwise especially provided,) to the sheriff or any constable of the county where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and it shall be against the goods and chattels of the person against whom the same is issued. [Code 1881 § 1798; 1873 p 353 § 97; 1854 p 240 § 98; RRS § 1879.]

**12.24.140 Amount of judgment to be noted.** Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall indorse the time of the reception of the same. [Code 1881 § 1799; 1873 p 353 § 98; 1854 p 240 § 99; RRS § 1880.]

**12.24.150 Renewal of execution.** If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice who issues the same, or by the justice to whom his docket is transferred, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force in all respects for thirty days and no longer; and an entry of such renewal shall be made in the docket of the justice. [Code 1881 § 1800; 1873 p 353 § 99; 1854 p 240 § 100; RRS § 1881.]

**12.24.160 Notice of sale upon execution.** The officer, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county, of the time and place, when and where they will be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale. [Code 1881 § 1801; 1873 p 354 § 100; 1854 p 241 § 101; RRS § 1882.]

**12.24.170 Sale upon execution—Return.** At the time and place so appointed, if the goods and chattels be present for inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto. [Code 1881 § 1802; 1873 p 354 § 101; 1854 p 241 § 102; RRS § 1883.]

**12.24.180 Officer forbidden to purchase.** No officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, and every such purchase shall be absolutely void. [Code 1881 § 1803; 1873 p 354 § 102; 1854 p 241 § 103; RRS § 1884.]

**12.24.190 Execution for fees and costs.** Any justice of the peace may issue an execution against the prevailing party, to collect fees and costs for which such party may be liable, after an execution has been first issued against the other party, and returned "no property found." [Code 1881 § 1806; 1873 p 354 § 105; 1854 p 241 § 106; RRS § 1887.]

**12.24.200 Claim to property by third party.** If any property levied on be claimed by any other person than the defendant in the execution, and the claimant make affidavit of his title or right to the possession of the same, stating the ground of such title or right, and serve the same upon the sheriff or constable, while the property is in his possession, said sheriff or constable shall not be bound to keep the property unless the plaintiff on demand indemnify him in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit and when such claim is made, the sheriff or constable shall immediately file the claimant's affidavit with the justice, and notify the plaintiff thereof, and unless the property be at once released, the justice shall set the case for trial upon the allegations of the claimant's affidavit, and the case shall proceed and be determined in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit. [Code 1881 § 1807; 1877 p 202 § 6; 1873 p 355 § 106; 1854 p 241 § 107; RRS § 1888.]

**Reviser's note:** The words "this act" appeared in the 1881 law and apparently refer to attachment provisions therein which were repealed by 1886 p 46 § 38. The complete attachment statutes of 1886 are codified in chapter 7.12 RCW.

**12.24.210 Other remedies available to third party.** Nothing contained in RCW 12.24.200 shall be so construed as to prevent the claimant of property levied on by execution from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed. [Code 1881 § 1808; 1873 p 355 § 107; 1863 p 355 § 89; 1854 p 242 § 108; RRS § 1889.]

## Chapter 12.28 REPLEVIN

### Sections

|           |  |
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| 12.28.010 | Immediate claim and delivery authorized.     |
| 12.28.020 | Contents of affidavit.                       |
| 12.28.030 | Order for delivery.                          |
| 12.28.040 | Execution of order—Delivery bond.            |
| 12.28.050 | Exceptions to sureties.                      |
| 12.28.060 | Return of property—Redelivery bond.          |
| 12.28.070 | Justification of sureties.                   |
| 12.28.080 | Property in building or inclosure—Procedure. |
| 12.28.090 | Duty of officer on taking property.          |
| 12.28.100 | Claim to property by third party.            |
| 12.28.110 | Return required within five days.            |

**12.28.010 Immediate claim and delivery authorized.** The plaintiff in an action to recover the possession of personal property, may, at the time of issuing such summons, or at any time before answer, claim the immediate delivery of such property as provided in this act. [Code 1881 § 1809; 1873 p 356 § 108; 1854 p 242 § 109; RRS § 1796.]

**Reviser's note:** "this act" appeared in the 1881 law and apparently refers to the act relating to justices of the peace approved December 1, 1881 consisting of 249 sections; however, all of the provisions relating to replevin as contained in this 1881 law are codified in the instant chapter (12.28 RCW).

**12.28.020 Contents of affidavit.** When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

(1) That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.

(2) That the property is wrongfully detained by the defendant.

(3) The alleged cause of the detention thereof, according to his best knowledge, information and belief.

(4) That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure, and

(5) The actual value of the property. [Code 1881 § 1810; 1873 p 356 § 109; 1854 p 242 § 110; RRS § 1797.]

**12.28.030 Order for delivery.** The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff or any constable of the county, to take the same from the defendant and deliver it to the plaintiff upon receiving a proper bond. [Code 1881 § 1811; 1873 p 356 § 110; 1854 p 243 § 111; RRS § 1798.]

**12.28.040 Execution of order—Delivery bond.** Upon the receipt of the affidavit and order with a bond, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also without delay, serve on the defendant a copy of the affidavit, order and bond, by delivering the same to him personally if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual abode of either within the county, with some person of suitable age and discretion; or if neither have any known place of abode in the county, by putting them into the post office, directed to the defendant at the post office nearest to him. [Code 1881 § 1812; 1873 p 356 § 111; 1854 p 243 § 112; RRS § 1799.]

**12.28.050 Exceptions to sureties.** The defendant may, within two days after the service of a copy of the affidavit, order and bond, give notice to the officer that he excepts to the sufficiency of the sureties. If he fail to

do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they justify, or new sureties be substituted, and they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in RCW 12.28.060. [Code 1881 § 1813; 1873 p 357 § 112; 1854 p 243 § 113; RRS § 1800.]

**12.28.060 Return of property—Redelivery bond.** At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the officer a bond executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter. [Code 1881 § 1814; 1873 p 357 § 113; 1854 p 243 § 114; RRS § 1801.]

**12.28.070 Justification of sureties.** The defendant's sureties, upon one day's notice to the plaintiff, or his attorney, shall justify before the justice, and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is complete, or expressly waived, and may retain the property until that time, but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff. [Code 1881 § 1815; 1873 p 357 § 114; 1854 p 244 § 115; RRS § 1802.]

**12.28.080 Property in building or inclosure—Procedure.** If the property, or any part thereof, be concealed in a building or inclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or inclosure to be broken open and take the property into his possession. [Code 1881 § 1816; 1873 p 358 § 115; 1854 p 244 § 116; RRS § 1803.]

**12.28.090 Duty of officer on taking property.** When the officer shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same. [Code 1881 § 1817; 1873 p 358 § 116; 1854 p 244 § 117; RRS § 1804.]

**12.28.100 Claim to property by third party.** If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the

same upon the officer before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by a bond executed by two sufficient sureties accompanied by their affidavits, that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the officer, unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity. [Code 1881 § 1818; 1873 p 558 § 117; 1854 p 244 § 118; RRS § 1805.]

**12.28.110 Return required within five days.** The officer shall return the order and affidavit with his proceedings thereon, to the justice within five days after taking the property mentioned therein. [Code 1881 § 1819; 1873 p 359 § 118; 1854 p 244 § 119; RRS § 1806.]

**Chapter 12.36  
APPEALS**

|           |  |
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| 12.36.010 | Appeal authorized.   |
| 12.36.020 | Appeal, how taken—Bond.  |
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| 12.36.070 | Transcript—Procedure on failure to make and certify—Amendment.       |
| 12.36.080 | No dismissal for defective bond.                                     |
| 12.36.090 | Judgment against appellant and sureties.                             |

*Costs in appeal from justice courts: RCW 4.84.130.*

**12.36.010 Appeal authorized.** Any person considering himself aggrieved by the judgment or decision of a justice of the peace in a civil action may, in person or by his agent or attorney, appeal therefrom to the superior court of the county where the judgment was rendered or decision made: *Provided*, There shall be no appeal allowed unless the amount in controversy, exclusive of costs, shall exceed the sum of twenty dollars. [1929 c 58 § 1; RRS § 1910. Prior: 1905 c 20 § 1; 1891 c 29 § 1; Code 1881 § 1858; 1873 p 367 § 156; 1854 p 252 § 160.]

**12.36.020 Appeal, how taken—Bond.** Such appeal shall be taken by serving a copy of notice of appeal on the adverse party or his attorney, and filing such notice of appeal with the justice, and, unless such appeal be by a county, city, town or school district, filing a bond or undertaking, as herein provided, within twenty days after the judgment is rendered or decision made. No appeal, except when such appeal is by a county, city, town or school district, shall be allowed in any case unless a bond or undertaking shall be executed on the part of



the appellant and filed with and approved by the justice, with one or more sureties, in the sum of one hundred dollars, conditioned that the appellant will pay all costs that may be awarded against him on appeal; or if a stay of proceedings before the justice be claimed, except by a county, city, town or school district, a bond or undertaking, with two or more personal sureties, or a surety company as surety, to be approved by the justice, in a sum equal to twice the amount of the judgment and costs, conditioned that the appellant will pay such judgment, including costs, as may be rendered against him on appeal, be so executed and filed. [1929 c 58 § 2; RRS § 1911. Prior: 1891 c 29 § 1; Code 1881 § 1859; 1873 p 367 §§ 157, 158; 1854 p 252 §§ 161, 162.]

**12.36.030 Stay of proceedings.** Upon an appeal being taken and a bond filed to stay all proceedings, the justice shall allow the same and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if in the meantime execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed. [1929 c 58 § 3; RRS § 1912. Prior: Code 1881 § 1861; 1873 p 368 § 160; 1854 p 252 § 164.]

**12.36.040 Release of property taken on execution.** On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the judgment debtor that may have been taken on execution. [1929 c 58 § 4; RRS § 1913. Prior: Code 1881 § 1862; 1873 p 368 § 161; 1854 p 252 § 165.]

**12.36.050 Transcript, procedure in superior court—Pleadings in superior court.** Within ten days after the appeal has been taken in a civil action or proceeding, the appellant shall file with the clerk of the superior court a transcript of all entries made in the justice's docket relating to the case, together with all the process and other papers relating to the case filed with the justice which shall be made and certified by such justice to be correct upon the payment of the fees allowed by law therefor, and upon the filing of such transcript, the superior court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as in this chapter otherwise provided. The issue before the justice shall be tried in the superior court without other or new pleadings, unless otherwise directed by the court. [1929 c 58 § 5; RRS §§ 1914, 1915. Prior: 1891 c 29 § 4; Code 1881 § 1863; 1873 p 368 § 162; 1854 p 252 § 166. Formerly RCW 12.36.050 and 12.36.060.]

**12.36.070 Transcript—Procedure on failure to make and certify—Amendment.** If upon an appeal being taken the justice shall fail, neglect or refuse, upon the tender or payment of the fees allowed by law, to make and certify the transcript, the appellant may make application, supported by affidavit, to the superior court and the court shall issue an order directing the justice to make and certify such transcript upon the payment

of such fees, and whenever it shall appear to the satisfaction of the superior court that the return of the justice to such order is substantially erroneous or defective it may order him to amend the same. If the justice shall fail, neglect or refuse to comply with any order issued under the provisions of this section he may be cited and punished as for contempt of court. [1929 c 58 § 6; RRS § 1916. Prior: 1891 c 29 § 5; Code 1881 § 1865; 1854 p 253 § 168.]

**12.36.080 No dismissal for defective bond.** No appeal allowed by a justice of the peace shall be dismissed on account of any defect in the bond on appeal, if the appellant, before the motion is determined, shall execute and file in the superior court such bond as he should have executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect. [1929 c 58 § 7; RRS § 1917. Prior: Code 1881 § 1867; 1873 p 369 § 165; 1854 p 253 § 169.]

**12.36.090 Judgment against appellant and sureties.** In all cases of appeal to the superior court, if on the trial anew in such court, the judgment be against the appellant, in whole or in part, such judgment shall be rendered against him and his sureties on the bond on appeal. [1929 c 58 § 8; RRS § 1918. Prior: Code 1881 § 1867; 1873 p 369 § 166; 1854 p 253 § 170.]

## Chapter 12.40 SMALL CLAIMS

### Sections

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| 12.40.010 | Department authorized—Jurisdictional amount.   |
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| 12.40.040 | Service of notice of claim—Fee.                |
| 12.40.050 | Requisites of claim.                           |
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| 12.40.090 | Informal pleadings.                            |
| 12.40.100 | Payment of judgment.                           |
| 12.40.110 | Procedure on nonpayment.                       |
| 12.40.120 | Appeals.                                       |

**12.40.010 Department authorized—Jurisdictional amount.** That in every justice court of this state there shall be created and organized by the court a department to be known as the "small claims department of the justice's court". If the justice court is operating under the provisions of chapters 3.30 through 3.74 RCW, the small claims department of that court shall have jurisdiction, but not exclusive, in cases for the recovery of money only where the amount claimed does not exceed three hundred dollars. If the justice court is not operating under the provisions of chapters 3.30 through 3.74 RCW, the small claims department of that court shall have jurisdiction, but not exclusive, in cases for the recovery of money only where the amount claimed does not exceed two hundred dollars. [1973 c 128 § 1; 1970 ex.s. c 83 § 1; 1963 c 123 § 1; 1919 c 187 § 1; RRS § 1777-1.]

**12.40.020 Action, how commenced.** Actions in such small claims departments shall be deemed commenced by the plaintiff appearing before the justice of the peace and subscribing to and verifying a claim as hereinafter provided. [1919 c 187 § 2; RRS § 1777-2.]

**12.40.025 Transfer of action to small claims department.** A defendant in a justice court proceeding wherein the claim is within the jurisdictional amount for the small claims department of the justice court may in accordance with court rules transfer the action to the small claims department: *Provided, however,* That in the event of such a transfer the provisions of RCW 12.40.070 shall not be applicable if the plaintiff was an assignee of the claim at the time the action was commenced nor shall the provisions of RCW 12.40.080 prohibit an attorney from representing the plaintiff if he was the attorney of record for the plaintiff at the time the action was commenced. [1970 ex.s. c 83 § 2.]

**12.40.030 Setting case for hearing—Fees.** Upon filing said claim such justice of the peace shall appoint a time for the hearing of said matter and shall cause to be issued a notice of the claim, as hereinafter provided, which shall be served upon the defendant.

Said justice of the peace shall collect in advance upon each claim the sum of one dollar, and this shall be the only fee for such justice of the peace to be charged or taxed against the plaintiff in such action during the pendency or disposition of said claim: *Provided, however,* That when any such "small claims department" shall be created and organized in any justice court as herein provided, in which the justice is not paid a salary, he may be paid as compensation for conducting such department from the county treasury of his county such monthly salary as the county court and commissioners of said county shall deem just and proper. [1963 c 123 § 2; 1919 c 187 § 3; RRS § 1777-3.]

**12.40.040 Service of notice of claim—Fee.** Said notice of claim can be served either as provided for the service of summons or complaint and notice in civil actions or by registered or certified mail provided a return receipt with the signature of the party being served is filed with the court, but no other paper is to be served with the notice. The officer serving such notice shall be entitled to receive from the plaintiff, besides mileage, one dollar for such service; which sum, together with the filing fee named in RCW 12.40.030, shall be added to any judgment given for plaintiff. [1970 ex.s. c 83 § 3; 1959 c 263 § 9; 1919 c 187 § 4; RRS § 1777-4.]

**12.40.050 Requisites of claim.** The claim hereinbefore referred to shall contain the name of the plaintiff and the name of the defendant, followed by a statement, in brief and concise form, of the nature and amount of said claim and the time of the accruing of such claim; and shall also state the name and residence of the defendant, if same be known to the plaintiff, for the purpose of serving the notice of claim on such defendant. [1919 c 187 § 5; RRS § 1777-5.]

**12.40.060 Requisites of notice.** Said notice of claim shall be directed to the defendant, naming him, and shall contain a statement in brief and concise form notifying such defendant of the name, address, amount and natures of the alleged claim of plaintiff, and directing and requiring defendant to appear personally in court before the justice of the peace of said justice's court at a time certain, which shall not be less than five nor more than ten days from the date of service of such notice; said notice shall further provide that in case of failure to so appear, judgment will be given against defendant for the amount of such claim. [1919 c 187 § 6; RRS § 1777-6.]

**12.40.070 Verification of claim.** All claims must be verified by the real claimant, and no claim shall be filed or prosecuted in such department by the assignee of such claim. [1919 c 187 § 7; RRS § 1777-7.]

**12.40.080 Hearing.** No attorney at law nor any person other than the plaintiff and defendant, shall concern himself or in any manner interfere with the prosecution or defense of such litigation in said department without the consent of the justice of said justice's court; nor shall it be necessary to summon witnesses, but the plaintiff and defendant in any claim shall have the privilege of offering evidence in their behalf by witnesses appearing at such hearing, and the justice may informally consult witnesses or otherwise investigate the controversy between the parties, and give judgment or make such orders as may by him be deemed to be right, just and equitable for the disposition of the controversy. [1919 c 187 § 8; RRS § 1777-8.]

**12.40.090 Informal pleadings.** No formal pleading, other than the said claim and notice, shall be necessary to define the issue between the parties; and the hearing and disposition of all such actions shall be informal, with the sole object of dispensing speedy and quick justice between the litigants: *Provided,* That no attachment, garnishment or execution shall issue from the small claims department on any claim except as hereinafter provided. [1919 c 187 § 9; RRS § 1777-9.]

**12.40.100 Payment of judgment.** If the judgment or order be against the defendant, it shall be his duty to pay the same forthwith upon such terms and conditions as the justice of such court shall prescribe. [1919 c 187 § 10; RRS § 1777-10.]

**12.40.110 Procedure on nonpayment.** The judgment of said court shall be conclusive. If the defendant fails to pay the judgment according to the terms and conditions thereof within twenty days, the justice before whom such hearing was had shall certify such judgment in substantially the following form:

Washington.

In the Justice's Court of \_\_\_\_\_ County, before  
 \_\_\_\_\_ Justice of the Peace for \_\_\_\_\_ Pre-  
 cinct.

\_\_\_\_\_ Plaintiff,  
 vs.  
 \_\_\_\_\_ Defendant.

In the Small Claims Department.

This is to certify that in a certain action before me, the undersigned, had on this the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, wherein \_\_\_\_\_ was plaintiff and \_\_\_\_\_ defendant, jurisdiction of said defendant having been had by personal service (or otherwise) as provided by law, I then and there entered judgment against said defendant in the sum of \_\_\_\_\_ Dollars; which judgment has not been paid.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
 Justice of the Peace sitting  
 in the Small Claims De-  
 partment.

The justice of the peace of said justice's court shall forthwith enter such judgment transcript on the judgment docket of such justice's court; and thereafter garnishment, execution and other process on execution provided by law may issue thereon, as obtains in other cases of judgments of justice's courts, and transcripts of such judgments may be filed and entered in judgment lien dockets in superior courts with like effect as in other cases. [1973 c 128 § 2; 1919 c 187 § 11; RRS § 1777-11.]

**12.40.120 Appeals.** No appeal shall be permitted from a judgment of the small claims department of the justice court where the amount claimed was less than one hundred dollars nor shall any appeal be permitted by a party who requested the exercise of jurisdiction by the small claims court. [1970 ex.s. c 83 § 4.]

# TITLE 13

## JUVENILE COURTS AND JUVENILE DELINQUENTS

### Chapters

- 13.04 Juvenile courts.
- 13.06 Probation services—Special supervision programs.
- 13.07 Probation counselors—State aid.
- 13.16 Places of detention.
- 13.20 Management of detention facilities—Class AA counties.
- 13.24 Interstate compact on juveniles.

*Action against parent for wilful injury to property by minor: RCW 4.24.190.*

*Alcoholic beverage control: Title 66 RCW.*

*Child agencies: Chapter 26.36 RCW.*

*Child labor: Chapters 26.28, 28A.27, 49.12, 69.11 RCW.*

*Child welfare agencies: Chapter 74.15 RCW.*

*Compulsory school attendance: Chapter 28A.27 RCW.*

*Department of motor vehicles (formerly department of licenses), see note following chapter 43.24 RCW digest.*

*Department of social and health services*

*department created—Powers and duties transferred: RCW 43.20A.030.*

*powers, duties and functions of director of institutions, institution superintendents, transferred to secretary or his designee: RCW 43.20A.210.*

*powers, duties and functions of director of public assistance transferred to secretary or his designee: RCW 43.20A.190.*

*powers, duties and functions of divisions of department of institutions transferred to department: RCW 43.20A.220.*

*Firearms: RCW 9.41.080, 9.41.240.*

*Infants: Chapter 26.28 RCW.*

*Jurisdiction over Indians as to juvenile delinquency and dependent children: Chapter 37.12 RCW.*

*Leaving children in parked automobile: RCW 9.91.060.*

*Public institutions*

*division of children and youth services: Chapter 72.05 RCW.*

*state council for children and youth: RCW 72.05.180, 72.05.190.*

*Report of child abuse: Chapter 26.44 RCW.*

*State institutions: Title 72 RCW.*

*Tobacco: RCW 26.28.080.*

*Vacation and modification of judgments—Causes for enumerated: RCW 4.72.010(5).*

*Witnesses—Who are disqualified—Privileged communications: RCW 5.60.060.*

*Youth development and conservation corps: Chapter 43.51 RCW.*

### Chapter 13.04 JUVENILE COURTS

#### Sections

- 13.04.010 Juvenile court law—Dependent and delinquent children defined—Wards of state.
- 13.04.030 Juvenile courts—How constituted.
- 13.04.040 Probation counselors and persons in charge of detention facilities—Appointment, powers and duties, compensation.
- 13.04.050 Expenses of probation officers.

- 13.04.053 Notice to parent or guardian that child taken into custody—Time limitation on detention—Responsibility of juvenile court.
- 13.04.056 Informal disposition of case by probation officer—Review by juvenile judge.
- 13.04.060 Petition to take charge of child.
- 13.04.070 Summons—Hearing.
- 13.04.080 Publication of summons.
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*Aid to families with dependent children: Chapter 74.12 RCW.*

*Division of children and youth services; construed in connection with and supplemental to the juvenile court law: RCW 72.05.170 through 72.05.210.*

*Educational aid for handicapped children: Chapter 28A.13 RCW.*

*Record of traffic charges of juveniles to be furnished juvenile court: RCW 46.20.293.*

*Relinquishment of permanent care of child: RCW 26.36.010.*

*Schools designated close security institutions: RCW 72.05.130.*

*Transfer from minimum security to close security institution—Court order required: RCW 72.05.130(3).*

**13.04.010 Juvenile court law—Dependent and delinquent children defined—Wards of state.** This chapter shall be known as the "Juvenile Court Law" and

shall apply to all minor children under the age of eighteen years who are delinquent or dependent; and to any person or persons who are responsible for or contribute to, the delinquency or dependency of such children.

For the purpose of this chapter the words "dependent child" shall mean any child under the age of eighteen years:

(1) Who has no home or any settled place of abode, or any proper guardianship, or any visible means of subsistence; or

(2) Who has no parent, guardian or other responsible person; or who has no parent or guardian willing to exercise, or capable of exercising, proper parental control; or

(3) Whose home by reason of neglect, cruelty or depravity of his parents or either of them, or on the part of his guardian, or on the part of the person in whose custody or care he may be, or for any other reason, is an unfit place for such child; or

(4) Who frequents the company of reputed criminals, vagrants or prostitutes; or

(5) Who is found living or being in any house of prostitution or assignation; or

(6) Who habitually visits any saloon, or place where spirituous, vinous, or malt liquors are consumed or sold, bartered, or given away; or

(7) Who is incorrigible; that is, who is beyond the control and power of his parents, guardian, or custodian by reason of the conduct or nature of said child; or

(8) Who is in danger of being brought up to lead an idle, dissolute or immoral life; or

(9) Who is an habitual truant, as defined in the school laws of the state of Washington; or

(10) Who uses intoxicating liquor as a beverage, or who uses opium, cocaine, morphine, heroin, or marijuana, or other similar drug, without the direction of a competent physician; or

(11) Who wanders about in the nighttime without being on any lawful business or occupation; or

(12) Who is grossly and wilfully neglected as to medical care necessary for his well-being.

The words "delinquent child" mean any child under the age of eighteen years who violates any law of this state, or any ordinance of any town, city, or county of this state defining a crime or who has violated any federal law or law of another state defining a crime, and whose case has been referred to the juvenile court by any jurisdiction whatsoever.

For the purpose of this chapter only, all children who have been adjudicated delinquent and dependent children within the state shall be considered wards of this state and their persons shall be subject to the custody, care, guardianship and control of the court as hereinafter provided. [1961 c 302 § 1; 1913 c 160 § 1; RRS § 1987-1. Prior: 1909 c 190 § 1; 1905 c 18 § 1. Formerly RCW 13.04.010 and 13.04.020.]

*Truant school laws: Chapter 28A.27 RCW.*

**13.04.030 Juvenile courts—How constituted.** The superior courts in the several counties of this state, shall have original jurisdiction in all cases coming within the terms of this chapter. The case shall be tried without a

jury. In counties containing thirty thousand or more inhabitants, the judges of the superior court shall, at such times as they may determine, designate one or more of their number whose duty it shall be to hear all cases arising under this chapter. A special session to be designated as the "juvenile court session" shall be provided for the hearing of such cases and the findings of the court shall be entered in a book or books kept for the purpose, and known as the "juvenile record," and the court may, for convenience, be called the "juvenile court." In counties in which there is no resident judge of the superior court, the court commissioner shall have the power, authority and jurisdiction, concurrent with the superior court and the judge thereof, to hear all matters relating to dependent and delinquent children, and to enter judgment and make orders with the same power, force and effect as any judge of the superior court, subject to review only by the judge of the superior court, on motion or demand filed by any party in interest within ten days from the entry of the order or judgment by the court commissioner, as provided in RCW 2.24.050. [1937 c 65 § 1; 1929 c 176 § 1; 1921 c 135 § 1; 1913 c 160 § 2; RRS § 1987-2.]

*Court commissioners: Chapter 2.24 RCW, State Constitution Art. 4 § 23.*

*Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 28).*

**13.04.040 Probation counselors and persons in charge of detention facilities—Appointment, powers and duties, compensation.** The court shall, in any county or judicial district in the state, appoint or designate one or more persons of good character to serve as probation counselors during the pleasure of the court. In case a probation counselor shall be appointed by any court, the clerk of the court, if practicable, shall notify him in advance when a child is to be brought before said court. The probation counselor shall make such investigations as may be required by the court. The probation counselor shall inquire into the antecedents, character, family history, environments and cause of dependency or delinquency of every alleged dependent or delinquent child brought before the juvenile court and shall make his report in writing to the judge thereof. He shall be present in order to represent the interests of the child when the case is heard; he shall furnish the court such information and assistance as it may require, and shall take charge of the child before and after the trial as may be directed by the court.

All probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests for the violation of any state law or county or city ordinance, relative to the care, custody, and control of delinquent and dependent children.

The court may, in any county or judicial district in the state, appoint one or more persons who shall have charge of detention rooms or house of detention.

The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the board of county commissioners, or [in] cases of joint counties,

judicial districts of more than one county, or joint judicial districts such sums as shall be agreed upon by the boards of county commissioners of the counties affected, and such persons shall be paid as other county officers are paid. [1959 c 331 § 9; 1951 c 270 § 1; 1921 c 43 § 1; 1913 c 160 § 3; RRS § 1987-3.]

**13.04.050 Expenses of probation officers.** The probation officers, and assistant probation officers, and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses as may be authorized by the judge of the juvenile court, and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the expenses shall be paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specified amount of such expenses. [1913 c 160 § 4; RRS § 1987-4.]

**13.04.053 Notice to parent or guardian that child taken into custody—Time limitation on detention—Responsibility of juvenile court.** Whenever any child is taken into custody, the parent or guardian must be immediately notified. Such requirement may be waived by the court in cases where the parent or guardian cannot be located.

No child shall be held in detention or shelter longer than seventy-two hours excluding Sundays and holidays, unless a petition as provided for in RCW 13.04.060 has been filed. No child may be held longer than seventy-two hours after the filing of such a petition unless an order for such continued detention or shelter has been signed by the juvenile court judge. No child shall be detained for longer than thirty days without an order, signed by the judge, authorizing continued detention. In every order authorizing continued detention the court shall make and enter its findings upon which continued detention is based. A child in need of detention either by reason of assaultive conduct or because of probable failure to appear for further proceedings, whether alleged to be dependent or delinquent, shall, prior to findings and disposition by the court pursuant to RCW 13.04.095, be the responsibility of and provided for by the juvenile court. The juvenile court shall also provide necessary detention facilities and services for a child previously paroled from juvenile correctional facilities whose parole has been suspended by juvenile parole authorities based on one or more allegations of violation of a condition or conditions of parole. [1973 1st ex.s. c 101 § 1; 1961 c 302 § 2.]

**13.04.056 Informal disposition of case by probation officer—Review by juvenile judge.** Whenever any child is brought to their attention the probation officers in each county may with the consent of the parent, parents, or legal guardian make whatever informal adjustment or disposition of the case as is practical without the filing of a petition as provided in RCW 13.04.060 subject to the review of the juvenile court judge. [1961 c 302 § 3.]

**13.04.060 Petition to take charge of child.** Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent or delinquent child and praying that the superior court deal with such child as provided in this chapter: *Provided*, That in counties having paid probation officers, such officers shall, as far as possible, first determine if such petition is reasonably justifiable. Such petition shall be verified and shall contain a statement of facts constituting such dependency or delinquency, as defined in RCW 13.04.010, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of such dependent or delinquent child. There shall be no fee for filing such petitions. [1913 c 160 § 5; RRS § 1987-5.]

**13.04.070 Summons—Hearing.** Upon the filing of an information, or the petition, the clerk of the court shall issue a summons requiring the person having custody or control of the child, or with whom the child may be, to appear with the child at a place and time stated in the summons, which time shall not be less than twenty-four hours after service. The parents of the child, if living, and their residence is known, or its legal guardian, if there be one or if there is neither parent nor guardian, or if his or her residence is not known, then some relative, if there be one, and his residence is known, shall be notified of the proceedings; and in any case the judge shall appoint some suitable person or association to act in behalf of the child. If the person summoned as herein provided, shall fail without reasonable cause to appear and abide the order of the court, or bring the child, he shall be proceeded against as for contempt of court. In case the summons cannot be served or the parties served fail to obey [the] same, and in any case when it shall be made to appear to the court that said summons will be ineffectual, a warrant may issue on the order of the court, either against the parent or guardian or the person having custody of the child, or with whom the child may be, or against the child itself. On return of the summons or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Pending the final disposition of the case, the child may be retained in the possession of the person having charge of same, or may be kept in some suitable place provided by the city or county authorities, or by any association having for one of its objects the care of delinquent and dependent children. [1913 c 160 § 6; RRS § 1987-6.]

**13.04.080 Publication of summons.** In any case where it shall appear by the petition or verified statement, that the person standing in the position of natural or legal guardian of the person of any child, is a non-resident of this state, or that the name or place of residence or whereabouts of such person is unknown, as well as in all cases where, after due diligence, the officer has been unable to make service of the summons or notice provided for in RCW 13.04.070, and a copy of said notice has been deposited in the post office, postage prepaid, directed to such person at his last known

place of residence, the court may order said notice published in a legal newspaper printed in the county, qualified to publish summons, once a week for three consecutive weeks, the first publication of said notice to be at least twenty-five days prior to the date fixed for the hearing. Such notice shall be directed to the parent, parents, or other person claiming the right to the custody of the child, if their names are known, or if unknown, the phrase "To whom it may concern" shall be used and apply to, and be binding upon, any such persons whose names are unknown. The name of the court, the name of the child (or children if of one family), the date of the filing of the petition and the date of hearing and the object of the proceeding in general terms, shall be set forth and the whole shall be subscribed by the clerk. There shall be filed with the clerk an affidavit showing due publication of the notice and the cost of publication shall be paid by the county at not to exceed the rate paid by the county for other legal notices. The publication of notice shall be deemed equivalent to personal service upon all persons, known or unknown, who have been designated as provided in this section. [1961 c 302 § 4; 1913 c 160 § 7; RRS § 1987-7.]

**13.04.091 Hearings—Time and place—Not generally public—Notes and records.** All hearings may be conducted at any time or place within the limits of the county, and such cases shall not be heard in conjunction with other business of the court. The general public shall be excluded and only such persons shall be admitted who are found by the judge to have a direct interest in the case or in the work of the court.

Stenographic notes or any device which accurately records the proceedings may be required as provided in other civil cases pursuant to RCW 2.32.200. [1961 c 302 § 5. Prior: 1913 c 160 § 10, part; RCW 13.04.090, part.]

**13.04.095 Commitment of child—Order of court—Powers of department of institutions—Rescinding of commitment.** When any child shall be found to be delinquent or dependent, within the meaning of this chapter, the court shall make such order for the care, custody, or commitment of the child as the child's welfare in the interest of the state require. Subject to further order, the court may commit the child:

- (1) To the care of such child's parents, subject to supervision of the probation officer; or
- (2) To the custody of a probation officer, subject to such conditions as the judge may impose; or
- (3) To a reputable citizen or association able and willing to receive and care for such child; or
- (4) To an appropriate private agency authorized to care for children; or
- (5) To the department of public assistance; or
- (6) To the department of institutions if the court finds such child to be delinquent, or a dependent child whose dependency arises from incorrigibility as defined by RCW 13.04.010(7).

In no case shall a child be committed beyond the age of twenty-one years. A child committed to the department of institutions shall be subject to the supervision and control thereof and the department shall have the

power to parole such child under such conditions as may be prescribed.

The department of institutions shall have the power to discharge such child from custody, and the court shall have the power to rescind the commitment of such child, whenever his or her reformation shall be deemed complete.

The court shall rescind the commitment of any dependent child who was, prior to March 21, 1967, committed to the department of institutions unless such child is incorrigible or delinquent within the meaning of this chapter and the department of institutions shall return the child forthwith to the committing court for such action: *Provided*, That the court may commit such dependent child as otherwise provided in this chapter. [1967 c 137 § 1; 1961 c 302 § 6.]

*Prior laws on commitment: 1891 c 103 §§ 1-7; 1905 c 19 §§ 1, 2, 3; 1909 c 97 p 257 § 3; 1909 c 249 § 24; 1913 c 111 § 1; 1913 c 157 §§ 6, 7; 1957 c 297 §§ 5, 6; prior codification RCW 13.08.010-13.08.210.*

**13.04.100 Commitment of child—Order may be temporary, modified, etc.—Financial support of child.**

An order of commitment may be temporary or permanent in the discretion of the court, and may be revoked or modified as the circumstances of the case may thereafter require. In any case in which the court shall find the child dependent or delinquent, it may in the same or subsequent proceeding upon the parent or parents, guardian, or other person having custody of said child, being duly summoned or voluntarily appearing, proceed to inquire into the ability of such persons or person to support the child or contribute to its support, and if the court shall find such person or persons able to support the child or contribute thereto, the court may enter such order or decree as shall be according to equity in the premises, and may enforce the same by execution, or in any way in which a court of equity may enforce its decrees. [1969 ex.s. c 138 § 1; 1961 c 302 § 7; 1913 c 160 § 8; RRS § 1987-8.]

**13.04.105 Judgment for financial support.** In any case in which an order or decree of the juvenile court requiring a parent or parents, guardian, or other person having custody of a child to pay for detention care and/or support of such child is not complied with, the court may, upon such person or persons being duly summoned or voluntarily appearing, proceed to inquire into the amount due upon said order or decree and enter judgment for such amount against the defaulting party or parties, and such judgment shall be docketed as are other judgments for the payment of money.

In such judgments, the county in which the same are entered shall be denominated the judgment creditor, or the state may be the judgment creditor where the child is in the custody of a state agency and said judgments may be enforced by the prosecuting attorney of such county, or the attorney general where the state is the judgment creditor and any moneys recovered thereon shall be paid into the registry of the juvenile court and shall be disbursed to such person, persons, agency, or



governmental department as the court shall find to be entitled thereto.

Such judgments shall remain as valid and enforceable judgments for a period of six years subsequent to the entry thereof. [1961 c 302 § 8; 1955 c 188 § 1.]

*Financial responsibility for costs of detention: RCW 13.16.085.*

**13.04.110 Award and adoption of child.** In any case where the court shall award a child to the care of any association or individual, the child shall, unless otherwise ordered, become a ward and be subject to the guardianship of the association or individual to whose care it is committed; such association shall have authority, with the assent of the court, to place such child in a family home, either temporarily or for adoption. With the written consent of the parents, or other person having the right, under the laws of this state, to dispose of a dependent or delinquent child, the court may make an order or decree of adoption transferring to any suitable person or persons, willing to receive such child, all the rights of the parent or other guardian. The order of the court made upon such consent will be binding upon the child and its parents or guardian, or other person, the same as if such person were in court and consented thereto, whether made a party to the proceedings or not. The estate or property rights of any child shall not be affected nor subject to guardianship by the provisions of this chapter. The jurisdiction of the court shall continue over every child brought before the court, or committed pursuant to this chapter, and the court shall have power to order a change in the care or custody of such child, if at any time it is made to appear to the court that it would be for the best interests of the child to make such change. [1913 c 160 § 9; RRS § 1987-9.]

**13.04.115 Child not to be detained in jail or confined with adult convicts.** No court or magistrate shall commit a child under sixteen years of age to a jail, common lock-up, or police station; but if such child is unable to give bail, it may be committed to the care of the sheriff, police officer, or probation officer, who shall keep such child in some suitable place or house or school of detention provided by the city or county, outside the inclosure of any jail or police station, or in the care of any association willing to receive it and having as one of its objects the care of delinquent, dependent or neglected children. When any child shall be sentenced to confinement in any institution to which adult convicts are sentenced, it shall be unlawful to confine such child in the same building with such adult convicts, or to bring such child into any yard or building in which such adult convicts may be present. [1913 c 160 § 11; RRS § 1987-11.]

*Places of detention: Chapter 13.16 RCW.*

**13.04.120 Arrest of juvenile—Hearing—Traffic violations.** When, in any county where a juvenile court is held, a child under the age of eighteen years is taken into custody by a parole, peace, police or probation officer, such child shall be taken directly before such court, or placed in the detention home or place under

the jurisdiction of such court, or into the custody of the court probation officer: *Provided*, That if the parent, guardian, custodian or a responsible relative of the child furnishes the officer a signed statement agreeing to produce the child at the next juvenile court session, the child may be released to the signer of the statement. Any such signer who fails, without just cause shown to the court, to produce such child as agreed, shall be guilty of contempt of court and may be punished accordingly.

The court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court upon petition as hereinbefore provided. In any such case, the court shall require notice to be given and investigation to be made as in other cases under this chapter, and may adjourn the hearing from time to time for such purpose. Pending final disposition of the case the court may make such disposition of the custody of the child as it shall deem for the best welfare of the child. If, upon investigation, it shall appear that a child has been arrested upon the charge of having committed a crime, the court, in its discretion, may order such child to be turned over to the proper officers for trial under the provisions of the criminal code.

Nothing in this section shall be construed as forbidding any peace officer, police officer or probation officer from immediately taking into custody, without process, any child who is found violating any law or ordinance, or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare, unless immediate action is taken. In every such case, the officer taking the child into custody shall immediately report the fact to the juvenile court and the case shall then be proceeded with as provided in this chapter: *Provided*, That whenever a child is arrested for a violation of any law, including municipal ordinances, regulating the operation of vehicles on the public highways, a copy of the traffic citation and a record of the action taken by the juvenile court shall be forwarded by the court to the director of licenses in the same manner as provided in RCW 46.20.280. [1959 c 58 § 1; 1945 c 132 § 1; 1913 c 160 § 12; Rem. Supp. 1945 § 1987-12.]

**Reviser's note:** RCW 46.20.280 was repealed by 1965 ex. sess. c 121 § 46. Duty of courts to forward records of convictions, see RCW 46.20.270.

**13.04.130 Fingerprinting or photographing juvenile.** Neither the fingerprints nor a photograph shall be taken of any child under the age of eighteen years taken into custody for any purpose without the consent of juvenile court. [1945 c 132 § 2; Rem. Supp. 1945 § 1987-12a.]

**13.04.135 Establishment of house of detention and truant school.** Counties containing more than fifty thousand inhabitants shall, and counties containing a lesser number of inhabitants may, provide and maintain at public expense, a detention room or house of detention, separated or removed from any jail, or police station, to be in charge of a matron, or other person of good character, wherein all children within the provisions of this

chapter shall, when necessary, be sheltered, and in all counties maintaining a detention home, as herein provided, the county commissioners, together with the directors of any school district or districts, may establish in connection therewith a truant school for the purpose of affording a place of confinement, discipline, instruction and maintenance of children of compulsory school age, who may be committed thereto on such terms and conditions as may be agreed upon between the commissioners and the directors of such school district or districts. [1945 c 121 § 1; 1913 c 160 § 13; Rem. Supp. 1945 1987-13. Formerly RCW 13.16.010.]

*Detention in facility under jurisdiction of juvenile court—Financial responsibility for cost of detention: RCW 13.04.105, 13.16.085.*

**13.04.140 Construction.** This chapter shall be liberally construed to the end that its purpose may be carried out, to wit: that the care, custody and discipline of a dependent or delinquent child as defined in this chapter shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can be properly done, the dependent or delinquent child as defined in this chapter shall be placed in an approved family and may become a member of the family, by adoption or otherwise. No dependent or delinquent child as defined in this chapter shall be taken from the custody of its parent, parents or legal guardian, without the consent of such parent, parents or guardian, unless the court shall find such parent, parents or guardian is incapable or has failed or neglected to provide proper maintenance, training and education for said child; or unless said child has been tried on probation in said custody, and has failed to reform, or unless the court shall find that the welfare of said child requires that his custody shall be taken from said parent or guardian. In this chapter, the words used in any gender shall include all other genders, and the word "county" shall include "city and county," the plural shall include the singular and singular shall include the plural. [1913 c 160 § 14; RRS § 1987-14.]

**13.04.150 Modification of orders.** Any order made by the court in the case of a dependent or delinquent child may at any time be changed, modified or set aside, as to the judge may seem meet and proper. [1913 c 160 § 15; RRS § 1987-15.]

**13.04.160 Fees not allowed.** No fees shall be charged or collected by any officer or other person for filing petition, serving summons, or other process under this chapter. [1913 c 160 § 16; RRS § 1987-16.]

**13.04.170 Contributing to delinquency—Penalty—Bond.** In all cases where any child is dependent or delinquent under the terms of this title, the parent or parents, legal guardian, or person having custody of such child, or any other person, who, by any act or omission, encourages, causes or contributes to the dependency or delinquency of such child shall be guilty of a misdemeanor, and upon conviction thereof, be punished by fine not exceeding one thousand dollars, or imprisonment in the county jail for not more than one

year, or by both such fine and imprisonment, and the juvenile court shall have jurisdiction of all such misdemeanors. The court may suspend sentence for a violation of the provisions of this section and impose conditions as to conduct in the premises of any person so convicted, and make such suspension depend upon the fulfillment by such person of the conditions, and, in case of the breach of the conditions, or any thereof, the court may impose sentence as though there had been no suspension. The court may also, as a condition of such suspension, require a bond in such sum as it may designate, to be approved by the court, to secure the performance by such persons of the conditions imposed by the court on such suspension. The bond shall, by its terms, be made payable to the state, and any moneys received for a breach thereof shall be paid into the county treasury. [1953 c 116 § 1. Prior: 1913 c 160 § 17; RRS § 1987-17.]

*Assisting escape of inmate of mental institution or custodial school: RCW 9.31.100.*

*Child labor: RCW 26.28.060, 26.28.070.*

*Comic books, sale and distribution: Chapter 19.18 RCW.*

*Compulsory school attendance, penalties: Chapters 28A.27, 28A.87 RCW.*

*Delivery (of pistol) to minors and others forbidden: RCW 9.41.080.*

*Entry of minors to certain places, etc., prohibited: RCW 26.28.080.*

*Family desertion: Chapter 26.20 RCW.*

*Furnishing liquor to minors: Chapter 66.44 RCW.*

*Infants, certain types of employment prohibited: RCW 26.28.070.*

*Kidnaping: Chapter 9.52 RCW.*

*Leaving children unattended in parked automobile: RCW 9.91.060.*

*Maple Lane School, enticing inmates to leave: RCW 72.20.065.*

*Motor vehicles, unlawfully permitting child to operate: RCW 46.20.343.*

*Obscenity: Chapter 9.68 RCW.*

*Poisons and dangerous drugs not to be delivered to minors: RCW 69.40.050.*

*Public schools, penalties: Chapter 28A.87 RCW.*

*Restrictions on operation and location of dance halls: RCW 67.12.040.*

*Sale or gift of tobacco or intoxicating liquor to person under certain age is gross misdemeanor: RCW 26.28.080.*

*Sex crimes: Chapter 9.79 RCW.*

*Special legislation prohibited: State Constitution Art. 2 § 28(4), (11).*

*Teacher's abuse of pupil: RCW 28A.87.140.*

*Use of firearms by minor: RCW 9.41.240.*

**13.04.180 Board of visitation.** In each county, the judge presiding over the juvenile court sessions, as defined in this chapter, may appoint a board of four reputable citizens, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit as often as twice a year all institutions, societies and associations within the county receiving children under this chapter, as well as all homes for children or other places where individuals are holding themselves out as caretakers of children, also to visit other institutions, societies and associations within the state receiving and caring for children, whenever requested to do so by the judge of the juvenile court: *Provided*, The actual expenses of such board may be paid by the county commissioners when members thereof are requested to visit institutions outside of the

county seat, and no member of the board shall be required to visit any institutions outside the county unless his actual traveling expenses shall be paid as aforesaid. Such visits shall be made by not less than two members of the board, who shall go together or make a joint report. The board of visitors shall report to the court from time to time the condition of children received by or in charge of such institutions, societies, associations, or individuals. It shall be the duty of every institution, society, or association, or individual receiving and caring for children to permit any member or members of the board of visitation to visit and inspect such institution, society, association or home where such child is kept, in all its departments, so that a full report may be made to the court. [1913 c 160 § 18; RRS § 1987-18.]

**13.04.190 Commitment of delinquent to department of institutions—Notice of placement by director to be given court and parents or guardian.** Any boy or girl between the ages of eight and eighteen years who has been found delinquent by the juvenile court may be committed by the juvenile court to the department of institutions, for institutional placement in such reception diagnostic center, or other juvenile correctional facility under the supervision of the department of institutions as shall be designated by the director of the department of institutions: *Provided*, That at such time as institutional placement for any boy or girl committed by the juvenile court to the department has been designated by the director, or any transfer in institutional placement shall be made, notice thereof shall be given to the committing court and to the parents or guardian of such child, or any agency legally responsible for such child. [1961 c 302 § 10. Prior: 1959 c 251 § 2, part; 1957 c 297 § 4, part; RCW 13.08.190, part.]

**13.04.200 Director of institutions may place incorrigible juvenile delinquents over sixteen in reformatory—Duration—Definition.** The director of the department of institutions may designate the Washington state reformatory for the transfer in institutional placement of incorrigible juvenile delinquents over the age of sixteen years, the custody of such children to remain in the director, and such children in no event to remain at the Washington state reformatory beyond the time at which they are eligible for a complete release from the state training school as provided in RCW 13.08.140: *Provided*, That the term "incorrigible juvenile delinquent" for the purposes of this section shall mean conduct by a juvenile committed to the department by the juvenile court indicating over the course of a reasonable period of time that the rehabilitative program of the department can be of no further benefit to such juvenile, and that he is in need of closer security. [1961 c 302 § 12; 1959 c 251 § 2; 1957 c 297 § 4. Formerly RCW 13.08.190, part.]

**13.04.210 Petition for court review of director's decision on institutional placement or transfer—Filing, service.** The decision of the director on institutional placement or transfer of institutional placement of any

juvenile committed under the provisions of RCW 13.04.190 and 13.04.200 may be reviewed by the committing court, upon the petition of the parents or guardian of such juvenile, or any agency legally responsible for such juvenile or by the committing court on its own motion. Such petition must be filed in the committing juvenile court within thirty days from the date of the giving of notice of institutional placement or transfer in institutional placement by the director. A copy of the petition shall be served upon the director and the attorney general, either personally or by registered mail, at least ten days prior to the date set for hearing. [1961 c 302 § 13. Prior: 1957 c 297 § 5; RCW 13.08.200.]

**Reviser's note:** The reference to RCW 13.04.190 and 13.04.200 appears in the session law as "sections 10 and 11 of this amendatory act" Section 10 is codified as RCW 13.04.190. Section 11 does not contain any substantive law but merely directs the codification of section 12, which is codified herein as RCW 13.04.200.

**13.04.220 Court may modify, set aside secretary's decision on placement or transfer—Appeal.** If the court finds that the decision of the secretary on the institutional placement or transfer of institutional placement of any juvenile committed under the provisions of RCW 13.04.190 and 13.04.200 is arbitrary, capricious, or contrary to law, the court may change, modify, or set aside the decision of the secretary. The ruling of the committing court shall be appealable to the state supreme court or the court of appeals. [1971 c 81 § 54; 1961 c 302 § 14. Prior: 1957 c 297 § 6; RCW 13.08.210.]

**Reviser's note:** Reference to RCW 13.04.190 and 13.04.200; see note following RCW 13.04.210.

**13.04.230 Probation officer's investigation record and report withheld from public inspection—Who may inspect—Destruction.** The probation officer's investigation record and report in each case, shall be withheld from public inspection, but such records shall be kept open to the inspection of the child, his parents, or guardians, or attorney, and to such other persons as may secure a special order of the court therefor. Such records shall be kept as unofficial records of the court and may be destroyed at the discretion of the court. [1961 c 302 § 15. Prior: 1913 c 160 § 10, part; RCW 13.04.090, part.]

**13.04.240 Court order not deemed conviction of crime.** An order of court adjudging a child delinquent or dependent under the provisions of this chapter shall in no case be deemed a conviction of crime. [1961 c 302 § 16. Prior: 1913 c 160 § 10, part; RCW 13.04.090, part.]

**13.04.250 Destruction of files of juveniles committed to department of institutions upon attaining majority—Exceptions.** The director of institutions shall provide for the selective destruction of department of institutions' files of juveniles found delinquent by the juvenile courts and committed to the department of institutions, when such juvenile attains the age of twenty-one years: *Provided*, That the file of any juvenile committed by the juvenile court to a state residential school as provided

by RCW 72.33.130 may, in the discretion of the director, be preserved, except the file of any juvenile convicted of a felony shall be preserved. [1967 c 93 § 1.]

**Chapter 13.06**  
**PROBATION SERVICES—SPECIAL**  
**SUPERVISION PROGRAMS**

## Sections

- 13.06.010 Intention.
- 13.06.020 State to share in cost.
- 13.06.030 Rules—Standards—"Special supervision program" defined.
- 13.06.040 Application by county for state financial aid.
- 13.06.050 Conditions for receiving state funds—Base commitment rates—Amounts payable—Restrictions.
- 13.06.055 Housing authorities law—Group homes or halfway houses for released juveniles or developmentally disabled.
- 13.06.060 Pro rata payments.

**13.06.010 Intention.** It is the intention of the legislature in enacting this chapter to increase the protection afforded the citizens of this state, to permit a more even administration of justice in the juvenile courts, to rehabilitate juvenile offenders, and to reduce the necessity for commitment of juveniles to state juvenile correctional institutions by strengthening and improving the supervision of juveniles placed on probation by the juvenile courts of this state. [1969 ex.s. c 165 § 1.]

**Effective date—1969 ex.s. c 165:** "This act shall become effective on July 1, 1969." [1969 ex.s. c 165 § 7.] This applies to chapter 13.06 RCW.

**13.06.020 State to share in cost.** From any state moneys made available for such purpose, the state of Washington, through the department of institutions, shall, in accordance with this chapter, share in the cost of supervising probationers who could otherwise be committed by the juvenile courts to the custody of the director of the department of institutions, and who are granted probation and placed in "special supervision programs". [1969 ex.s. c 165 § 2.]

**13.06.030 Rules—Standards—"Special supervision program" defined.** The department of institutions shall adopt rules prescribing minimum standards for the operation of "special supervision programs" and such other rules as may be necessary for the administration of the provisions of this chapter. A "special supervision program" is one embodying a degree of supervision substantially above the usual or the use of new techniques in addition to, or instead of, routine supervision techniques, and which meets the standards prescribed pursuant to this section. Such standards shall be sufficiently flexible to foster the development of new and improved supervision practices. The director of institutions shall seek advice from appropriate county officials in developing standards and procedures for the operation of "special supervision programs". [1969 ex.s. c 165 § 3.]

**13.06.040 Application by county for state financial aid.** Any county may make application to the department of institutions in the manner and form prescribed by the department for financial aid for the cost of "special supervision programs". Any such application must include a plan or plans for providing special supervision of juveniles on probation and a method for certifying that moneys received are spent only for these "special supervision programs". [1969 ex.s. c 165 § 4.]

**13.06.050 Conditions for receiving state funds—Base commitment rates—Amounts payable—Restrictions.** No county shall be entitled to receive any state funds provided by this chapter until its application is approved, and unless and until the minimum standards prescribed by the department of social and health services are complied with and then only on such terms as are set forth hereafter in this section.

(1) A base commitment rate for each county and for the state as a whole shall be calculated by the department of social and health services. The base commitment rate shall be determined by computing the ratio of the number of juveniles committed to state juvenile correctional institutions plus the number of juveniles who have been convicted of felonies and committed to state correctional institutions after a juvenile court has declined jurisdiction of their cases and remanded them for prosecution in the superior courts, to the county population, such ratio to be expressed in a rate per hundred thousand population, for each of the calendar years 1964 through 1968. The average of these rates for a county for the five year period or the average of the last two years of the period, whichever is higher, shall be the base commitment rate, as certified by the secretary: *Provided*, That, a county may elect as its base commitment rate the average of the base commitment rates of all counties in the state over the last two years of the period described above. The county and state population shall be that certified as of April 1st of each year by the office of program planning and fiscal management, such population figures to be provided to the secretary of social and health services not later than June 30th of each year.

(2) An annual commitment rate shall be calculated by the department at the end of each year for each participating county and for the state as a whole, in a like manner as provided in subsection (1).

(3) The amount that may be paid to a county pursuant to this chapter shall be the actual cost of the operation of a special supervision program or four thousand dollars multiplied by the "commitment reduction number", whichever is the lesser. The "commitment reduction number" is obtained by subtracting (a) the product of the most recent annual commitment rate and population of the county for the same year from (b) the product of the base commitment rate and population of the county for the same year employed in (a).

(4) The secretary of social and health services will reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in reducing the annual commitment rate from its base commitment rate.

Whenever a claim made by a county pursuant to this chapter, covering a prior year, is found to be in error, an adjustment may be made on a current claim without the necessity of applying the adjustment to the allocation for the prior year.

(5) In the event a participating county earns in a payment period less than one-half of the sum paid in the previous payment period because of extremely unusual circumstances claimed by the county and verified by the secretary of the department of social and health services, the secretary may pay to the county a sum not to exceed actual program expenditures, provided, however, that in subsequent periods the county will be paid only the amount earned: *Provided, That* \*the amendatory provisions of subsection (5) of this act may be applied to payment periods prior to May 20, 1971.

(6) If the amount received by a county in reimbursement of its expenditures in a calendar year is less than the maximum amount computed under subsection (3) above, the difference may be paid to the county as reimbursement of program costs during the next two succeeding years upon receipt of valid claims for reimbursement of program expenses.

(7) Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs for delinquent juveniles or to develop county institutional programs.

(8) Any county averaging less than thirty commitments annually during either the two year or five year period used to determine the base commitment rate as defined in subsection (1) above may:

(a) apply for subsidies under subsection (1); or

(b) as an alternative, elect to receive from the state the salary of one full-time additional probation officer and related employee benefits.

(c) elect to receive from the state the salary and related employee benefits of one full-time additional probation officer and in addition, reimbursement for certain supporting services other than capital outlay and equipment whose total will not exceed a maximum limit established by the secretary of the department of social and health services; or

(d) elect to receive from the state reimbursement for certain supporting services other than capital outlay and equipment whose total cost will not exceed a maximum limit established by the secretary of the department of social and health services.

(9) In the event a county chooses one of the alternative proposals in subsection (8), it will be eligible for reimbursement only so long as the officer and supporting services are wholly used in the performance of probation services to supervision of persons eligible for state commitment and are paid the salary referred to in this section in accordance with a salary schedule adopted by rule of the department and:

(a) if its base commitment rate is below the state average, its annual commitment rate does not exceed the base commitment rate for the entire state; or

(b) if its base commitment rate is above the state average, its annual commitment rate does not in the year exceed by two its own base commitment rate.

(10) Where any county does not have a juvenile probation officer, but obtains such services by agreement with another county or counties, or, where two or more counties mutually provide probation services by agreement for such counties, then under such circumstances the secretary may make the computations and payments under this chapter as though the counties served with probation services were one geographical unit. [1973 1st ex.s. c 198 § 1; 1971 ex.s. c 165 § 1; 1969 ex.s. c 165 § 5.]

**\*Reviser's note:** "the amendatory provisions of subsection (5) of this act" apparently refers to the changes made in subsection (5) of this section by 1971 ex.s. c 165 § 1.

**Effective date—1973 1st ex.s. c 198:** "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 on July 1, 1973." [1973 1st ex.s. c 198 § 3.]

**13.06.055 Housing authorities law—Group homes or halfway houses for released juveniles or developmentally disabled.** See RCW 35.82.285.

**13.06.060 Pro rata payments.** The director of institutions may make pro rata payments to eligible counties for periods of less than one year, but for periods of not less than six months, upon satisfactory demonstration of a reduction in commitments in accordance with the provisions of this chapter and the regulations of the department of institutions. [1969 ex.s. c 165 § 6.]

**Chapter 13.07**

**PROBATION COUNSELORS—STATE AID**

Sections

|           |  |
|-----------|--|
| 13.07.010 | Definitions.   |
| 13.07.020 | Program established—Funds.   |
| 13.07.030 | Purpose and amount of grants.  |
| 13.07.040 | Counselors—Appointment—Term—Qualifications.                            |
| 13.07.050 | Applications for aid—Declaration of eligibility.                       |
| 13.07.060 | Reports and accounting—Payment procedure—Denial or withholding of aid. |
| 13.07.070 | Aid limited to six years.  |

**13.07.010 Definitions.** As used in RCW 13.07.010 through 13.07.060:

(1) "Director" means the director of the department of institutions;

(2) "County" means any county of the third class or lower classification;

(3) "Probation counselor" includes probation officers and persons performing similar duties relative to probation services. [1959 c 331 § 1.]

**13.07.020 Program established—Funds.** There is hereby established a program of state aid for county probation services which shall be administered by the department of social and health services. Funds appropriated or otherwise made available shall be disbursed by the department in accordance with the provisions of this chapter. [1973 1st ex.s. c 59 § 2; 1959 c 331 § 2.]

**Effective date—1973 1st ex.s. c 59:** See note following RCW 43.79.420.

**13.07.030 Purpose and amount of grants.** State aid shall be granted by the director in an amount he deems advisable for reimbursement of expenditures incurred by counties in employing the necessary probation counselors (1) to establish and maintain probation services in counties in which such services have not heretofore existed, and (2) to increase the number of probation counselors of any county and maintain such additional counselors: *Provided*, That probation counselors so employed shall conform to the personnel standards and qualifications as provided in RCW 13.07.040 before such funds shall be available. [1965 ex.s. c 137 § 2; 1959 c 331 § 4.]

**13.07.040 Counselors—Appointment—Term—Qualifications.** Probation counselors under this chapter shall be appointed by the court, be subject to its supervision and administration, and shall serve at its pleasure. Each probation counselor so appointed shall in addition to having desirable personal qualifications as determined by the presiding judge shall be of good moral character and hold a bachelor of arts degree from an accredited college or university. [1959 c 331 § 6.]

**13.07.050 Applications for aid—Declaration of eligibility.** Applications from counties for state aid under this chapter shall be made prior to July 1st of each year by the presiding judge of the county or judicial district to the director in conformity with rules and regulations prescribed by him. The application shall include (1) detailed plans and cost estimates covering probation services for the fiscal year, or portion thereof, for which aid is requested, (2) estimated clerical, maintenance, and operation costs, (3) educational qualifications and salaries of probation counselors, (4) designation of all items for which reimbursement is requested, and (5) such other information as the director deems pertinent.

Upon approval by the director the plan shall be adopted and the county declared eligible not later than August 1st of each year. [1959 c 331 § 7.]

**13.07.060 Reports and accounting—Payment procedure—Denial or withholding of aid.** Each county approved as eligible for reimbursement under this chapter shall submit to the director at the end of each quarterly period, in such form as required by the director, a verified accounting of all expenditures made by the county in providing probation services. The accounting shall designate those items for which reimbursement is claimed and shall be presented together with a claim for reimbursement. The director shall thereupon certify to the state treasurer the amount to be paid to such county and the state treasurer shall thereupon pay such amount to the county from the probation services account.

The director may deny, or direct the state treasurer to withhold, payment of state aid to any county if such county (1) fails to conform to the minimum educational qualifications for probation counselors provided for in this chapter, or (2) discontinues an approved plan, or (3) fails to enforce in a satisfactory manner any rules

promulgated pursuant to this chapter or any law now in effect or hereafter enacted which relate in any manner to the administration of probation services. [1959 c 331 § 8.]

**13.07.070 Aid limited to six years.** Any county deemed eligible for and which receives state aid for county probation services, as provided for in this chapter, as now or hereafter amended, for six consecutive years after August 6, 1965, shall thereafter be deemed ineligible to receive state aid for probation services under this chapter as now or hereafter amended. [1965 ex.s. c 137 § 3.]

## Chapter 13.16 PLACES OF DETENTION

### Sections

|           |   |
|-----------|---|
| 13.16.010 | Establishment of house of detention and truant school.                |
| 13.16.020 | Lack of detention facilities constitutes emergency.                   |
| 13.16.030 | Mandatory function of counties.                                       |
| 13.16.040 | Counties authorized to acquire facilities and employ adequate staffs. |
| 13.16.050 | Federal or state aid.   |
| 13.16.060 | Statutory debt limits may be exceeded.                                |
| 13.16.070 | Bonds may be issued without vote of electors.                         |
| 13.16.080 | Allocation of budgeted funds.   |
| 13.16.085 | Financial responsibility for cost of detention.                       |
| 13.16.090 | Child not to be detained in jail or confined with adult convicts.     |

*Child agencies: Chapter 26.36 RCW.*

*Child welfare agencies: Chapter 74.14 RCW.*

*Child welfare services: Chapter 74.12 RCW.*

*Jails—Establishment authorized: RCW 36.63.010.*

**13.16.010 Establishment of house of detention and truant school.** See RCW 13.04.135.

**13.16.020 Lack of detention facilities constitutes emergency.** The attention of the legislature having been called to the absence of juvenile detention facilities in the various counties of the state, the legislature hereby declares that this situation constitutes an emergency demanding the invocation by the several counties affected of the emergency powers granted by virtue of RCW 36.40.140 through 36.40.200. [1945 c 188 § 1; Rem. Supp. 1945 § 2004-1.]

**13.16.030 Mandatory function of counties.** The construction, acquisition and maintenance of juvenile detention facilities for dependent, wayward and delinquent children, separate and apart from the detention facilities for adults, is hereby declared to be a mandatory function of the several counties of the state. [1945 c 188 § 2; Rem. Supp. 1945 § 2004-2.]

**13.16.040 Counties authorized to acquire facilities and employ adequate staffs.** Boards of county commissioners in the various counties now suffering from a lack of adequate detention facilities for dependent, delinquent and wayward children shall, in the manner provided by law, declare an emergency and appropriate, in the manner provided by law, sufficient funds to meet all demands for adequate care of dependent, delinquent and wayward children. All appropriations

made under the provisions of RCW 13.16.020 through 13.16.080 are to be used exclusively for the acquisition, purchase, construction or leasing of real and personal property and the employment and payment of salaries for an adequate staff of juvenile officers and necessary clerical staff and assistants and for furnishing suitable food, clothing and recreational facilities for dependent, delinquent and wayward children. [1945 c 188 § 3; Rem. Supp. 1945 § 2004-3.]

**13.16.050 Federal or state aid.** In connection with the financing of facilities and the employment of a staff of juvenile officers for dependent, delinquent and wayward children, the various boards of county commissioners affected shall attempt to secure such advances, loans, grants in aid, donations as gifts as may be secured from the federal government or any of its agencies or from the state government or from other public or private institutions or individuals. [1945 c 188 § 4; Rem. Supp. 1945 § 2004-4.]

**13.16.060 Statutory debt limits may be exceeded.** Appropriations made under authority and by virtue of RCW 13.16.020 through 13.16.080 and debts incurred by any county in carrying out the provisions of RCW 13.16.020 through 13.16.080 may exceed all statutory limitations otherwise applicable and limiting the debt any county may incur. [1945 c 188 § 5; Rem. Supp. 1945 § 2004-5.]

**13.16.070 Bonds may be issued without vote of electors.** In order to carry out the provisions of RCW 13.16.020 through 13.16.080 the several counties affected shall utilize any and all methods available to them by law for financing the program authorized by RCW 13.16.020 through 13.16.080 and may fund any and all debts incurred by the issuance of general obligation bonds of the county in the manner provided by law, without submitting the same to a vote of the people. [1945 c 188 § 6; Rem. Supp. 1945 § 2004-6.]

**13.16.080 Allocation of budgeted funds.** In order to carry out the provisions of RCW 13.16.020 through 13.16.080 the board of county commissioners is hereby authorized, any law to the contrary notwithstanding, to allocate any funds that may be available in any item or class of the budget as presently constituted to the fund to be used to carry out the provisions of RCW 13.16.020 through 13.16.080. [1945 c 188 § 7; Rem. Supp. 1945 § 2004-7.]

**13.16.085 Financial responsibility for cost of detention.** In any case in which a child under eighteen years of age has been placed in any detention facility under the jurisdiction of the juvenile court, the court may inquire into the facts concerning the necessity or propriety of such child's detention notwithstanding the fact that such child may not have been found to be either a dependent or a delinquent child.

The court may, either in the proceedings involving the question of dependency or delinquency of such child or in a separate proceeding, upon the parent or

parents, guardian, or other person having custody of said child being duly summoned or voluntarily appearing, proceed to inquire into the necessity or propriety of such detention and into the ability of such person or persons to pay the cost of such detention.

If the court finds that such detention was necessary or proper for the welfare of the child or for the protection of the community, and if the court also finds the parent or parents, guardian, or other person having the custody of such child able to pay or contribute to the payment of the cost of such detention, the court may enter such order or decree as shall be equitable in the premises, and may enforce the same by execution or in any way a court of equity may enforce its decrees. [1955 c 369 § 1.]

*Juvenile court: Chapter 13.04 RCW.*

**13.16.090 Child not to be detained in jail or confined with adult convicts.** See RCW 13.04.115.

### Chapter 13.20

## MANAGEMENT OF DETENTION FACILITIES— CLASS AA COUNTIES

#### Sections

- 13.20.010 Board of managers—Appointment authorized—Composition.
- 13.20.020 Terms of office—Removal—Vacancies.
- 13.20.030 Chairman—Quorum—Organization—Rules of procedure.
- 13.20.040 Powers and duties of board.
- 13.20.050 Compensation of members.

*Places of detention: Chapter 13.16 RCW.*

*Places of detention—Juvenile court act: Chapter 13.04 RCW.*

**13.20.010 Board of managers—Appointment authorized—Composition.** The judges of the superior court of any class AA county are hereby authorized, by majority vote, to appoint a board of managers to administer, subject to the approval and authority of such superior court, the probation and detention services for dependent and delinquent children coming under the jurisdiction of the juvenile court.

Such board shall consist of four citizens of the county and the judge who has been selected to preside over the juvenile court. [1955 c 232 § 1.]

**13.20.020 Terms of office—Removal—Vacancies.** The nonjudicial members of the board first appointed shall be appointed for the respective terms of one, two, three, and four years and until their successors are appointed and qualified; and thereafter their successors shall be appointed for terms of four years and until their successors are appointed and qualified.

Any such member of the board may be removed at any time by majority vote of the judges of the superior court.

Vacancies on the board may be filled at any time by majority vote of said judges, and such appointee shall hold office for the remainder of the term of the member in whose stead he was appointed. [1955 c 232 § 2.]



**13.20.030 Chairman—Quorum—Organization—Rules of procedure.** The judicial member of the board shall be the chairman thereof; a majority thereof shall constitute a quorum for the transaction of business; and the board shall have authority to organize itself in such manner and to establish such rules of procedure as it deems proper for the performance of its duties. [1955 c 232 § 3.]

**13.20.040 Powers and duties of board.** The juvenile court board of managers shall:

(1) Have general supervision and care of all physical structures and grounds connected with the rendition of probation and detention services and power to do everything necessary to the proper maintenance thereof within the limits of the appropriations authorized.

(2) Subject to the approval and authority of said superior court, the board of managers shall have authority and power to determine the type and extent of probation and detention services to be conducted in connection with the juvenile court, and authority over all matters concerning employment, job classifications, salary scales, qualifications, and number of personnel necessarily involved in the rendition of probation and detention services.

(3) Prepare, in accordance with the provisions of the county budget law, and file with the county auditor a detailed and itemized estimate, both of probable revenues from sources other than taxation and of all expenditures required for the rendition of the services under the jurisdiction of said board.

(4) Prepare and file with the superior court on July 1st of each year, and at such other times and in such form as the court shall require, a report of its operations. [1955 c 232 § 4.]

**13.20.050 Compensation of members.** No member of the board shall receive any compensation or emolument whatever for services as such board member. [1955 c 232 § 5.]

### Chapter 13.24

## INTERSTATE COMPACT ON JUVENILES

| Sections  |   |
|-----------|---|
| 13.24.010 | Execution of compact.   |
| 13.24.020 | Juvenile compact administrator.                               |
| 13.24.030 | Supplementary agreements.                                     |
| 13.24.040 | Financial arrangements.                                       |
| 13.24.050 | Fees.   |
| 13.24.060 | Responsibilities of state departments, agencies and officers. |
| 13.24.900 | Short title.  |

**13.24.010 Execution of compact.** The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

## INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

### ARTICLE I—Findings and Purposes

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(1) Cooperative supervision of delinquent juveniles on probation or parole;

(2) The return, from one state to another, of delinquent juveniles who have escaped or absconded;

(3) The return, from one state to another, of nondelinquent juveniles who have run away from home; and

(4) Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

### ARTICLE II—Existing Rights and Remedies

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

### ARTICLE III—Definitions

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

### ARTICLE IV—Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state

for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located, a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in

order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

#### ARTICLE V—Return of Escapees and Absconders

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two

certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all

states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

#### ARTICLE VI—Voluntary Return Procedure

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV (a) or of article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

#### ARTICLE VII—Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the

sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

#### ARTICLE VIII—Responsibility for Costs

(a) That the provisions of articles IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or

subdivision thereof may be responsible pursuant to articles IV (b), V (b) or VII (d) of this compact.

#### ARTICLE IX—Detention Practices

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

#### ARTICLE X—Supplementary agreements

That the duly constituted administrative authorities, of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(2) Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

(3) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) Provide for reasonable inspection of such institutions by the sending state;

(6) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

#### ARTICLE XI—Acceptance of Federal and Other Aid

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

#### ARTICLE XII—Compact Administrators

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and

regulations to carry out more effectively the terms and provisions of this compact.

#### ARTICLE XIII—Execution of Compact

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

#### ARTICLE XIV—Renunciation

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

#### ARTICLE XV—Severability

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1955 c 284 § 1.]

**13.24.020 Juvenile compact administrator.** Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder. [1955 c 284 § 2.]

**13.24.030 Supplementary agreements.** The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate

officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1955 c 284 § 3.]

**13.24.040 Financial arrangements.** The compact administrator, subject to the approval of the state auditor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1955 c 284 § 4.]

**13.24.050 Fees.** Any judge of this state who appoints counsel or guardian ad litem pursuant to the provision of the compact may, in his discretion, fix a fee to be paid out of funds available for disposition by the court but no such fee shall exceed twenty-five dollars. [1955 c 284 § 5.]

**13.24.060 Responsibilities of state departments, agencies and officers.** The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. [1955 c 284 § 6.]

**13.24.900 Short title.** This chapter may be cited as the "uniform interstate compact on juveniles." [1955 c 284 § 7.]

# TITLE 14

## AERONAUTICS

### Chapters

- 14.04 Aeronautics commission.
- 14.07 Municipal airports—1941 act.
- 14.08 Municipal airports—1945 act.
- 14.12 Airport zoning.
- 14.16 Aircraft and airman regulations.
- 14.20 Aircraft dealers.
- 14.30 Western regional short haul air transportation compact.

*Aircraft excise tax: Chapter 82.48 RCW.*

*Assessment of air transportation companies for property tax purposes: Chapter 84.12 RCW.*

*Lease of county property for airport purposes: RCW 36.34.180.*

### Chapter 14.04 AERONAUTICS COMMISSION

#### Sections

- 14.04.010 Statement of policy.
- 14.04.020 Definitions.
- 14.04.030 State aeronautics commission created.
- 14.04.040 Director of aeronautics—Qualifications—Salary—Duties.
- 14.04.050 Organization of commission—Officers—Quorum—Meetings.
- 14.04.060 Offices.
- 14.04.070 General powers.
- 14.04.080 Drafts of legislation, other duties.
- 14.04.090 Aid to municipalities—Federal aid.
- 14.04.100 Acquisition and disposal of airports, facilities, etc.
- 14.04.110 Zoning powers not interfered with.
- 14.04.120 Condemnation, how exercised.
- 14.04.130 Contracts or leases of facilities in operating airports.
- 14.04.140 Lease of airports.
- 14.04.150 Lien for state's charges.
- 14.04.160 Acceptance of federal moneys.
- 14.04.170 State airways system.
- 14.04.180 Execution of necessary contracts.
- 14.04.185 Establishment of procedures required by conditions of federal transfers of facilities.
- 14.04.190 Exclusive grants prohibited.
- 14.04.200 Exercise of powers is public and governmental purpose.
- 14.04.210 Rules and regulations—Standards.
- 14.04.220 Operating aircraft recklessly or under influence of intoxicants or drugs.
- 14.04.230 Aircraft and airman certificates required.
- 14.04.233 Registration of pilots—Certificates—Fees—Exemptions—Use of fees.
- 14.04.236 Aircraft search and rescue, safety and education fund—Created—Moneys from registration of pilots deposited in.
- 14.04.240 Penalties for violations.
- 14.04.250 Registration of aircraft.
- 14.04.260 Airport sites—Certificates of approval.
- 14.04.270 Licensing of airports.
- 14.04.280 Investigations, hearings, etc.—Subpoenas—Compelling attendance.
- 14.04.290 Joint hearings—Cooperation.

- 14.04.300 State and municipal agencies to cooperate.
- 14.04.310 Enforcement of aeronautics laws.
- 14.04.320 Service of orders—Hearings—Review.
- 14.04.330 Exchange of data, reports of violations, etc.
- 14.04.340 Marking hazardous structures and obstacles—Hearing to determine hazard.
- 14.04.350 Marking hazardous structures and obstacles—Reporting location of hazardous structures or obstacles—Subpoenas.
- 14.04.360 Marking hazardous structures and obstacles—Exemption of structures required by federal law to be marked.
- 14.04.900 Severability—1947 c 165.
- 14.04.910 Short title.

**14.04.010 Statement of policy.** It is hereby declared that the purpose of this chapter is to further the public interest and aeronautical progress by providing for the protection and promotion of safety in aeronautics; by cooperating in effecting uniformity of the laws and regulations relating to the development and regulation of aeronautics in the several states consistent with federal aeronautics laws and regulations; by granting to a state agency such powers and imposing upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, assist in the development of a statewide system of airports, cooperate with and assist the municipalities of this state and others engaged in aeronautics, and encourage and develop aeronautics; by establishing only such regulations as are essential in order that persons engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and by providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state. [1947 c 165 § 2; Rem. Supp. 1947 § 10964-82.]

**14.04.020 Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

(1) "Aeronautics" mean and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(2) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(3) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or right-of-way, together with all airport buildings and facilities located thereon.

(4) "Commission" means the state aeronautics commission.

(5) "Director" means the director of aeronautics of this state.

(6) "State" or "this state" means the state of Washington.

(7) "Air navigation facility" means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(8) "Operation of aircraft" or "operate aircraft" means the use, navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(9) "Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances, and any individual who serves in the capacity of aircraft dispatcher or air-traffic control tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

(10) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics, but excludes any instructor in a public school, university or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, while in the performance of his duties at such school, university or institution.

(11) "Air school" means any person who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward; but excludes any public school, university or institution of higher learning duly accredited and approved for carrying on collegiate work.

(12) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(13) "Municipal" means pertaining to a municipality, and "municipality" shall mean any county, city, town, authority, district or other political subdivision or public corporation of this state.

(14) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off.

(15) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the commission as a route suitable for air navigation. [1947 c 165 § 1; Rem. Supp. 1947 § 10964-81.]

#### 14.04.030 State aeronautics commission created.

There is hereby created the "Washington state aeronautics commission," to consist of one member from each congressional district, who shall be appointed by the governor, by and with the advice and consent of the senate, and who shall continue in office, as designated by the governor at the time of appointment, through the last day of the second, third, fourth, fifth, sixth and seventh calendar years, respectively, following the passage of this chapter: *Provided*, That from and after July 1, 1967, in order that there may be one commissioner from each congressional district, an additional commissioner shall be appointed by the governor for a term commencing August 1, 1967, and expiring December 31, 1972, and the governor shall appoint one additional commissioner within thirty days following the creation of each additional congressional district for a term ending on the December 31st of the fifth year following such appointment. The successors of the members initially appointed shall be appointed for terms of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualification of his successor. No more than a simple majority of the members shall be appointed from the same political party. All members of the commission shall be citizens and bona fide residents of the state. No more than three members shall have any direct or indirect financial or pecuniary interest in civil aviation. No member shall receive any salary for his services, but shall be reimbursed for actual and necessary expenses incurred by him in the performance of his duties and shall be paid the sum of twenty-five dollars per diem for each day actually spent in attending to his duties as a member of the commission, but no member shall receive more than five hundred dollars in any one year as per diem. The members of the commission may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office, in the manner provided by law for the removal of other public officials for like cause. [1967 c



68 § 1; 1947 c 165 § 3; Rem. Supp. 1947 § 10964–83. Prior: 1945 c 252 § 1; Rem. Supp. 1945 § 10964–60.]

**Terms of present members:** "This 1967 amendatory act shall not affect the appointments or terms of the present members of the aeronautics commission." [1967 c 68 § 3.] This applies to RCW 14.04.030 and 14.04.040.

**14.04.040 Director of aeronautics—Qualifications—Salary—Duties.** A director of aeronautics shall be appointed by the commission and shall serve at the pleasure of the commission. He shall be appointed with due regard to his fitness, by aeronautical education and by knowledge of and recent practical experience in aeronautics, for the efficient dispatch of the powers and duties duly invested in and imposed upon him. He shall devote his entire time to the duties of his office and perform such services as the commission shall authorize and direct, and not be actively engaged or employed in any other business, vocation, or employment, nor shall he have any pecuniary interest in or any stock in or bonds of any civil aeronautics enterprise. He shall receive a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040, and shall be reimbursed for all traveling and other expenses incurred by him in the discharge of his official duties.

He shall be the executive officer of the commission and under its supervision shall administer the provisions of this chapter and the rules, regulations and orders established thereunder and all other laws of the state relative to aeronautics. He shall attend, but not vote at, all meetings of the commission. He shall be in charge of the offices of the commission and responsible to the commission for the preparation of reports and the collection and dissemination of data and other public information relating to aeronautics. At the direction of the commission, he shall, together with the chairman of the commission, execute all contracts entered into by the commission.

The director shall appoint, in accordance with chapter 41.06 RCW subject to the approval of the commission such experts, field and office assistants, clerks, and other employees as may be required and authorized for the proper discharge of the functions of the commission and for whose services funds have been appropriated.

The commission may, by written order filed in its office, delegate to the director any of the powers or duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised by the director in the name of the commission. [1967 c 68 § 2; 1961 c 289 § 1; 1947 c 165 § 4; Rem. Supp. 1947 § 10964–84. Prior: 1945 c 252; Rem. Supp. 1945 §§ 10964–60—10964–68.]

**14.04.050 Organization of commission—Officers—Quorum—Meetings.** The commission shall, within thirty days after its appointment, organize, adopt a seal, and make such rules and regulations for its administration, not inconsistent herewith, as it may deem expedient and may from time to time amend such rules and regulations. At such organization meeting it shall

elect from among its members a chairman, a vice chairman, and a secretary to serve for one year, and annually thereafter shall elect such officers; all to serve until their successors are appointed and qualified. The commission shall at its initial meeting fix a date and place for its regular meeting. Four members shall constitute a quorum, and no action shall be taken by less than a majority of the commission. Special meetings may be called as provided by its rules and regulations. Regular meetings shall be held at the commission's established offices, but, whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, it may hold meetings, hearings or proceedings at any other place designated by it. The commission shall transmit a report in writing to the governor before December 1st of each year, which report shall contain a summary of its proceedings during the preceding fiscal year, a detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the commission, such other information as it may deem necessary or useful, and any additional information which may be requested by the governor. The fiscal year of the commission shall conform to the fiscal year of the state. [1947 c 165 § 5; Rem. Supp. 1947 § 10964–85. Prior: 1945 c 252 § 5; Rem. Supp. 1945 § 10964–64.]

*Reports, state fiscal year: RCW 43.01.035, 43.86.140.*

**14.04.060 Offices.** Suitable offices and office equipment shall be provided by the state for the commission in a city in the state that it may designate and the commission may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the administration of this chapter. [1947 c 165 § 6; Rem. Supp. 1947 § 10964–86.]

**14.04.070 General powers.** The commission shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage the establishment of airports and air navigation facilities. It shall cooperate with and assist the federal government, the municipalities of this state, and other persons in the development of aeronautics, and shall seek to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the commission in the development of aeronautics and aeronautical facilities in this state. [1947 c 165 § 7; Rem. Supp. 1947 § 10964–87.]

**14.04.080 Drafts of legislation, other duties.** The commission may draft and recommend necessary legislation to advance the interests of the state in aeronautics, represent the state in aeronautical matters before federal agencies and other state agencies, and participate as party plaintiff or defendant or as intervener on behalf of the state or any municipality or citizen thereof in any controversy which involves the interest of the state in aeronautics. [1947 c 165 § 8; 1945 c 252 § 5; Rem. Supp. 1947 § 10964–88.]

**14.04.090 Aid to municipalities—Federal aid.** The commission 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 commission 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, 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 one hundred thousand dollars for any one project: *Provided further*, That no grant or loan or both shall be granted unless the municipality or municipalities acting jointly shall from their own funds match any funds made available by the commission.

The commission is authorized to act as agent of any municipality or municipalities acting jointly, upon the request of such municipality or municipalities, 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 a municipal airport or air navigation facility; and if requested by such municipality or municipalities may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance, or operation; and all municipalities are authorized to designate the commission as their agent for the foregoing purposes. The commission, 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 municipal airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the commission upon such terms and conditions as are prescribed by the United States. All moneys received by the commission 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. [1947 c 165 § 9; Rem. Supp. 1947 § 10964–89.]

**14.04.100 Acquisition and disposal of airports, facilities, etc.** The commission is authorized on behalf of and in the name of the state, out of appropriations and other moneys made available for such purposes, to plan,

establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports, air navigation facilities, and air markers and/or air marking systems, either within or without the state, including the construction, installation, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers. For such purposes the commission may by purchase, gift, devise, lease, condemnation or otherwise, acquire property, real or personal, or any interest therein, including easements or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, marking or lighting of obstructions or airport hazards, or to prevent the establishment of airport hazards. In like manner the commission may acquire existing airports and air navigation facilities: *Provided*, That it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of such municipality. The commission may by sale, lease, or otherwise, dispose of any such property, airport, air navigation facility, or portion thereof or interest therein. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposals to any municipality or state government or the United States for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commission may deem in the best interest of the state. The commission may exercise any powers granted by this section jointly with any municipalities, agencies or departments of the state government, with other states or their municipalities, or with the United States. [1947 c 165 § 10; Rem. Supp. 1947 § 10964–90.]

**14.04.110 Zoning powers not interfered with.** Nothing contained in this chapter shall be construed to limit any right, power or authority of the state or a municipality to regulate airport hazards by zoning. [1947 c 165 § 11; Rem. Supp. 1947 § 10964–91.]

*Planning commissions: Chapter 35.63 RCW.*

**14.04.120 Condemnation, how exercised.** In the condemnation of property authorized by this section [chapter], the commission shall proceed in the name of the state in the manner that property is acquired by the state highway department for public uses. [1947 c 165 § 12; Rem. Supp. 1947 § 10964–92.]

*Acquisition of highway property: Chapter 47.12 RCW.*  
*Eminent domain by state: Chapter 8.04 RCW.*

**14.04.130 Contracts or leases of facilities in operating airports.** In operating an airport or air navigation facility owned or controlled by the state, the commission may enter into contracts, leases and other arrangements for a term not exceeding twenty-five years with any persons granting the privilege of using or improving such airport or air navigation facility or any portion or

facility thereof or space therein for commercial purposes, conferring the privilege of supplying goods, commodities, things, services or facilities at such airport or air navigation facility, or making available services to be furnished by the commission or its agents at such airport or air navigation facility. In each case the commission may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the cost of operation to the state: *Provided*, That in no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility, or portion or facility thereof. [1947 c 165 § 13; Rem. Supp. 1947 § 10964-93.]

**14.04.140 Lease of airports.** The commission may by contract, lease or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed twenty-five years the privilege of operating, as agent of the state or otherwise, any airport owned or controlled by the state: *Provided*, That no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the commission might not have undertaken under RCW 14.04.130. [1947 c 165 § 14; Rem. Supp. 1947 § 10964-94.]

**14.04.150 Lien for state's charges.** To enforce the payment of any charges for repairs to, improvements, storage or care of any personal property made or furnished by the commission or its agents in connection with the operation of an airport or air navigation facility owned or operated by the state, the state shall have liens on such property, which shall be enforceable by the commission as provided by law. [1947 c 165 § 15; Rem. Supp. 1947 § 10964-95.]

**14.04.160 Acceptance of federal moneys.** The commission is authorized to accept, receive, receipt for, disburse and expend federal moneys, and other moneys public or private, made available to accomplish, in whole or in part, any of the purposes of this section. All federal moneys accepted under this section shall be accepted and expended by the commission upon such terms and conditions as are prescribed by the United States. In accepting federal moneys under this section, the commission shall have the same authority to enter into contracts on behalf of the state as is granted to the commission under RCW 14.04.090 with respect to federal moneys accepted on behalf of municipalities. All moneys received by the commission 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 purpose of which the same were

made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available. [1947 c 165 § 16; 1945 c 252 § 7; Rem. Supp. 1947 § 10964-96.]

**14.04.170 State airways system.** The commission may designate, design, and establish, expand, or modify a state airways system which will best serve the interest of the state. It may chart such airways system and arrange for publication and distribution of such maps, charts, notices and bulletins relating to such airways as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned: *Provided*, That such facilities conform to federal safety standards. [1947 c 165 § 17; Rem. Supp. 1947 § 10964-97.]

**14.04.180 Execution of necessary contracts.** The commission may enter into any contracts necessary to the execution of the powers granted it by this chapter. All contracts made by the commission, either as the agent of the state or as the agent of any municipality, shall be made pursuant to the laws of the state governing the making of like contracts: *Provided*, That where the planning, acquisition, construction, improvement, maintenance, or operation of any airport, or air navigation facility is financed wholly or partially with federal moneys, the commission as agent of the state or of any municipality, may let contracts in the manner prescribed by the federal authorities acting under the laws of the United States and any rules or regulations made thereunder. [1947 c 165 § 18; Rem. Supp. 1947 § 10964-98.]

**14.04.185 Establishment of procedures required by conditions of federal transfers of facilities.** The aeronautics commission is authorized to establish the necessary accounts or administrative procedures required by conditions attached to transfers of airport facilities from the federal government to the state of Washington. [1963 c 73 § 1.]

**14.04.190 Exclusive grants prohibited.** The commission shall grant no exclusive right for the use of any landing area or air navigation facility under its jurisdiction. This section shall not be construed to prevent the making of contracts, leases and other arrangements pursuant to this chapter. [1947 c 165 § 19; Rem. Supp. 1947 § 10964-99.]

**14.04.200 Exercise of powers is public and governmental purpose.** The acquisition of any lands or interest therein pursuant to this chapter, the planning, acquisition, establishment, construction, improvement, maintenance, equipment, and operation of airports and air navigation facilities, whether by the state separately or jointly with any municipality or municipalities, and the exercise of any other powers herein granted to the commission are hereby declared to be public and governmental functions, exercised for a public purpose, and

matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the state in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity. [1947 c 165 § 20; Rem. Supp. 1947 § 10964-100.]

**14.04.210 Rules and regulations—Standards.** The commission may perform such acts, issue and amend such orders, make, promulgate, and amend such reasonable general rules, regulations and procedures, and establish such minimum standards, consistent with the provisions of this chapter, as it shall deem necessary to perform its duties hereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons operating, using or traveling in aircraft or persons receiving instruction in flying or ground subjects pertaining to aeronautics, and the safety of persons and property on land or water, and developing and promoting aeronautics in this state. No rule or regulation of the commission shall apply to airports or air navigation facilities owned or operated by the United States.

The commission shall keep on file with the secretary of state, and at the principal office of the commission, a copy of all its rules and regulations for public inspection.

The commission shall provide for the publication and general distribution of all its orders, rules, regulations and procedures having general effect. [1947 c 165 § 21; Rem. Supp. 1947 § 10964-101.]

*Notice of meetings: Chapter 42.30 RCW.*

**14.04.220 Operating aircraft recklessly or under influence of intoxicants or drugs.** It shall be unlawful for any person to operate an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air or on the ground or water, in a careless manner so as to endanger the life or property of another. In any proceeding charging careless or reckless operation of aircraft in violation of this section, the court in determining whether the operation was careless or reckless may consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics. [1947 c 165 § 22; Rem. Supp. 1947 § 10964-102.]

**14.04.230 Aircraft and airman certificates required.** It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit or license issued by the United States, if such certificate, permit or license is required by the United States, and a current registration certificate issued by the director of the department of motor vehicles, if registration of the aircraft with the department of motor vehicles is required by this chapter. It shall be unlawful for any person to engage in aeronautics as an airman in the state unless he has an appropriate effective airman certificate, permit, rating or license issued

by the United States authorizing him to engage in the particular class of aeronautics in which he is engaged, if such certificate, permit, rating or license is required by the United States and a current airman's registration certificate issued by the commission as required by RCW 14.04.233.

Where a certificate, permit, rating or license is required for an airman by the United States or by RCW 14.04.233, it shall be kept in his personal possession when he is operating within the state. Where a certificate, permit or license is required by the United States or by this chapter for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state and shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors. Such certificates shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official or employee of the aeronautics commission authorized pursuant to this chapter to enforce the aeronautics laws, or any official, manager or person in charge of any airport, or upon the reasonable request of any person. [1967 ex.s. c 68 § 2; 1967 ex.s. c 9 § 7; 1949 c 49 § 11; 1947 c 165 § 23; Rem. Supp. 1949 § 10964-103.]

**Purpose—1967 ex.s. c 68:** "The purpose of this act is to correct inconsistencies in amendment to section 23, chapter 165, Laws of 1947 and RCW 14.04.230, occasioned by two amendments to the same section by two different bills neither of which took cognizance of the other." [1967 ex.s. c 68 § 1.] This applies to RCW 14.04.230 and to 1967 ex.s. c 68 § 3 which repealed 1967 c 207 § 1 which also amended RCW 14.04.230.

*Federal airmen certification: 52 U.S. Stat. at Large 1008, 49 U.S.C. 1952 ed. § 552.*

*Federal certification of aircraft: 52 U.S. Stat. at Large 1009, 49 U.S.C. 1952 ed. § 553.*

*Federal licensing of aircraft and airmen required: RCW 14.16.020, 14.16.030.*

**14.04.233 Registration of pilots—Certificates—Fees—Exemptions—Use of fees.** The commission shall require that every pilot who is a resident of this state and every nonresident pilot who regularly operates any aircraft in this state shall be registered with the state aeronautics commission for each calendar year by January 31st thereof. The commission shall charge an annual fee not to exceed five dollars for each such registration. Registration under this section shall be required thirty days after June 8, 1967. All registration certificates issued pursuant to this section shall expire on December 31st of each year.

The registration fee imposed by this section shall be used by the commission for the purpose of (a) search and rescue of lost and downed aircraft and airmen under the direction and supervision of the director of aeronautics, and (b) safety and education.

Registration shall be effected by filing with the commission a certified written statement, containing the information reasonably required by the commission. The commission shall issue certificates of registration and in connection therewith shall prescribe requirements for the possession and exhibition of such certificates.

The provisions of this section shall not apply to:

(1) The pilot who operates an aircraft exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory or possession of the United States, or the District of Columbia;

(2) A pilot registered under the laws of a foreign country;

(3) A pilot engaged exclusively in commercial flying constituting an act of interstate or foreign commerce;

(4) Any person piloting an aircraft equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser.

Failure to register as provided in this section shall be deemed to be a violation of RCW 14.04.230 and shall subject the offender to the penalties incident thereto. [1967 c 207 § 2.]

**14.04.236 Aircraft search and rescue, safety and education fund—Created—Moneys from registration of pilots deposited in.** There is hereby created in the general fund of the state of Washington an account to be known as the aircraft search and rescue, safety and education fund. All moneys received by the commission under RCW 14.04.233 shall be deposited in such account. [1967 c 207 § 3.]

**14.04.240 Penalties for violations.** Any person violating any of the provisions of this chapter, or any of the rules, regulations or orders issued pursuant thereto, shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both such fine and imprisonment: *Provided*, That any person violating any of the provisions of RCW 14.04.220 or 14.04.230 shall be guilty of a gross misdemeanor which shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year or by both in any proceeding brought in superior court and by a fine of not more than five hundred dollars or by imprisonment for not more than six months or by both in any proceedings brought in justice court. In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court. [1947 c 165 § 24; Rem. Supp. 1947 § 10964-104.]

**14.04.250 Registration of aircraft.** Every aircraft shall be registered with the department of motor vehicles for each calendar year in which the aircraft is operated within this state. A fee of four dollars shall be charged for each such registration and each annual renewal thereof.

Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and

airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section shall be the only requisites for registration of an aircraft under this section.

The registration fee imposed by this section shall be payable to and collected by the director of the department of motor vehicles. The fee for any calendar year must be paid during the month of January, and shall be collected by the director of the department of motor vehicles at the time of the collection by him of the said excise tax. If the director of the department of motor vehicles is satisfied that the requirements for registration of the aircraft have been met, he shall thereupon issue to the owner of the aircraft a certificate of registration therefor. The director of the department of motor vehicles shall pay to the state treasurer the registration fees collected under this section, which registration fees shall be credited to the general fund.

It shall not be necessary for the registrant to provide the director of the department of motor vehicles with originals or copies of federal certificates, permits, ratings, or licenses. The director of the department of motor vehicles shall issue certificates of registration, or such other evidences of registration or payment of fees as he may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

The provisions of this section shall not apply to:

(1) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft registered under the laws of a foreign country;

(3) An aircraft which is owned by a nonresident and registered in another state: *Provided*, That if said aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

(4) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(5) An aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(6) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW.

The director of the department of motor vehicles shall be notified within one week of any change in ownership of a registered aircraft. The notification shall contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the director of the department of motor vehicles, the registration of that aircraft may be canceled by the director of the department of motor

vehicles, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner. [1967 ex.s. c 9 § 8; 1955 c 150 § 11; 1949 c 49 § 12; 1947 c 165 § 25; Rem. Supp. 1949 § 10964-105.]

*Aircraft dealers: Chapter 14.20 RCW.*

*Definition of terms: RCW 14.04.020, 14.20.010.*

**14.04.260 Airport sites—Certificates of approval.** Except as hereinafter provided, the commission is authorized to provide for the approval of airport sites and the issuance of certificates of such approvals. No charge shall be made for any such approval and certificates of such approval shall be issued without charge to all persons requesting them. Any municipality or person desiring or planning to construct or establish an airport may, prior to the acquisition of the site or prior to the construction or establishment of the proposed airport, make application to the commission for approval of the site. The commission shall with reasonable dispatch grant approval of a site if it is satisfied that the site is adequate, that if constructed or established it will conform to minimum standards of safety, and that safe air traffic patterns could be worked out for such proposed airport and for all existing airports and approved airport sites in its vicinity. An approval of a site may be granted subject to any reasonable conditions which the commission may deem necessary to effectuate the purposes of this section, and shall remain in effect unless sooner revoked by the commission, until a license for an airport located on the approved site has been issued. The commission may, after notice and opportunity for hearing to holders of certificates of an approval, revoke such approval when it shall reasonably determine that there has been an abandonment of the airport site, or a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an airport or to comply with the conditions of the approval, or that because of a change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted. No approval shall be required for the site of any existing airport. [1947 c 165 § 26; Rem. Supp. 1947 § 10964-106.]

**14.04.270 Licensing of airports.** The commission is authorized to provide for the licensing of airports and the annual renewal of such licenses. It may charge license fees not exceeding one hundred dollars for each original license, and not exceeding fifty dollars for each renewal thereof. The commission shall, with reasonable dispatch, upon receipt of an application for an original license and the payment of the duly required fee therefor, issue an appropriate license. All licenses shall be renewable annually upon payment of the fees prescribed. Licenses and renewals thereof may be issued subject to any reasonable conditions that the commission may deem necessary to effectuate the purposes of this section. The commission may, after notice and opportunity for hearing to the licensee, revoke any license or renewal thereof, or refuse to issue a renewal, when it shall reasonably determine that there has been an

abandonment of the airport as such, or that there has been a failure to comply with the conditions of the license or renewal thereof, or that because of change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued. It shall be unlawful for any municipality, or officer or employee thereof, or any person to operate an airport without an appropriate license for such, as may be duly required by rule or regulation issued pursuant to this section.

In connection with the grant approval of a proposed airport site or the issuance of an airport license, the commission may, on its own motion or upon the request of an affected or interested person, hold a public hearing thereon.

The provisions of this section shall not apply to airports owned or operated by the United States. The commission may exempt any other class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation promulgated or from any requirement of such rule or regulation if it finds that the application of such rule, regulation or requirement would be an undue burden on such class and is not required in the interest of public safety. [1947 c 165 § 27; Rem. Supp. 1947 § 10964-107.]

**14.04.280 Investigations, hearings, etc.—Subpoenas—Compelling attendance.** The commission or any member thereof and the director or any officer or employee of the commission designated by it shall have the power to hold investigations, inquiries and hearings concerning matters covered by the provisions of this chapter including accidents in aeronautics within this state. Hearings shall be open to the public and, except as hereinafter provided, shall be held upon such call or notice as the commission shall deem advisable. Each member of the commission, the director and every officer or employee of the commission designated by it to hold any inquiry, investigation or hearing shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and order the attendance of witnesses and the production of papers, books and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the commission or its authorized representatives may invoke the aid of any competent court of general jurisdiction. The court may thereupon order such person to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof. [1947 c 165 § 28; Rem. Supp. 1947 § 10964-108.]

**14.04.290 Joint hearings—Cooperation.** The commission is authorized to confer with or to hold joint hearings with any agency of the United States in connection with any matter arising under this chapter, or relating to the development of aeronautics.



The commission is authorized to avail itself of the cooperation, services, records and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of this chapter, and shall furnish to the agencies of the United States such services, records and facilities as may be practicable.

The commission shall report to the appropriate agency of the United States all accidents in aeronautics in this state of which it is informed, and shall in so far as is practicable preserve, protect and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until the federal agency institutes an investigation. [1947 c 165 § 29; Rem. Supp. 1947 § 10964-109.]

**14.04.300 State and municipal agencies to cooperate.** In carrying out the provisions of this chapter the commission may use the facilities and services of other agencies of the state and of the municipalities of the state to the utmost extent possible, and such agencies and municipalities are authorized and directed to make available their facilities and services. [1947 c 165 § 30; Rem. Supp. 1947 § 10964-110.]

**14.04.310 Enforcement of aeronautics laws.** It shall be the duty of the commission, its members, director, officers, and employees of the commission, and every state and municipal officer charged with the enforcement of state and municipal laws, to enforce and assist in the enforcement of this chapter and of all other laws of this state relating to aeronautics. The director and those officers or employees of the commission designated by the director in writing are hereby granted police powers solely for the enforcement of state aeronautics laws and the regulations having the effect of law. [1955 c 204 § 1; 1947 c 165 § 31; Rem. Supp. 1947 § 10964-111.]

**14.04.320 Service of orders—Hearings—Review.** Every order of the commission requiring performance of certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate or license shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the commission will be given or the approval, license or certificate granted or restored or the order modified or changed. Orders issued by the commission pursuant to the provisions of this chapter shall be served upon the persons affected either by registered mail or in person. In every case where notice and opportunity for hearing are required under the provisions of this chapter the order of the commission shall, on not less than ten days notice, specify a time when and place where the person affected may be heard, or the time within which he may request hearing, and such order shall become effective upon the expiration of the time for exercising such opportunity for hearing, unless a hearing is held or requested within the time provided, in which case the order shall be suspended until the commission shall affirm, disaffirm or modify such order after hearing held or default by the person affected. To

the extent practicable, hearings on such orders shall be in the county where the affected person resides or does business. Any person aggrieved by an order of the commission or by the grant, denial or revocation of any approval, license or certificate may have the action of the commission reviewed by the courts of this state in the manner provided for, and subject to the rules of law applicable to the review of the orders of other administrative bodies of the state. [1947 c 165 § 32; Rem. Supp. 1947 § 10964-112.]

**14.04.330 Exchange of data, reports of violations, etc.** The commission is authorized to report to the appropriate federal agencies and agencies of other states all proceedings instituted charging violation of RCW 14.04.220 and 14.04.230 and all penalties, of which it has knowledge, imposed upon airmen or the owners or operators of aircraft for violations of the law of this state relating to aeronautics or for violations of the rules, regulations or orders of the commission. The commission is authorized to receive reports of penalties and other data from agencies of the federal government and other states and, when necessary, to enter into agreements with federal agencies and the agencies of other states governing the delivery, receipt, exchange and use of reports and data. The commission may make the reports and data of the federal agencies, the agencies of other states, and the courts of this state available, with or without request therefor, to any and all courts of this state. [1947 c 165 § 33; Rem. Supp. 1947 § 10964-113.]

**14.04.340 Marking hazardous structures and obstacles—Hearing to determine hazard.** Any structure or obstacle which obstructs the air space above ground or water level, when determined by the commission after a hearing to be a hazard or potential hazard to the safe flight of aircraft, shall be plainly marked, illuminated, painted, lighted or designated in a manner to be approved in accordance with the general rules and regulations of the commission so that the same will be clearly visible to airmen. In determining which structures or obstacles constitute or may become a hazard to air flight, the commission shall take into account only those obstacles located at river, lake and canyon crossings and in other low altitude flight paths usually traveled by aircraft. [1961 c 263 § 2.]

**14.04.350 Marking hazardous structures and obstacles—Reporting location of hazardous structures or obstacles—Subpoenas.** The director shall have the authority to require owners, operators, lessees or others having the control or management of structures or obstacles over one hundred fifty feet above ground or water level and which are or may become a hazard to air flight to report the location of such existing or proposed structures or obstacles to the commission. For that purpose the director may issue subpoenas and subpoenas duces tecum returnable within twenty days to the commission. In the event a person refuses to obey the director's subpoena, the commission may certify to the superior court all facts of any such refusal. The court shall summarily hear evidence on such refusal, and, if



the evidence warrants, punish such person refusing in the same manner and to the same extent as for contempt committed before the court. [1961 c 263 § 3.]

**14.04.360 Marking hazardous structures and obstacles—Exemption of structures required by federal law to be marked.** RCW 14.04.340 and 14.04.350 shall not apply to structures required to be marked by federal regulations. [1961 c 263 § 4.]

**14.04.900 Severability—1947 c 165.** If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1947 c 165 § 35.]

**14.04.910 Short title.** This act may be cited as the "State Aeronautics Commission Act." [1947 c 165 § 37.]

### Chapter 14.07

#### MUNICIPAL AIRPORTS—1941 ACT

##### Sections

- 14.07.010 General powers—Municipal purpose and public use.
- 14.07.020 Acquisition of property—Eminent domain—Exemption.
- 14.07.030 Appropriation of money or conveyance of property to other municipalities.
- 14.07.040 Acts ratified and confirmed—Chapter cumulative.

*Lease of county property for airport purposes: RCW 36.34.180.*

*Lease of port district property for airport purposes: RCW 53.08.080.*

*Municipal airports—1945 act: Chapter 14.08 RCW.*

**14.07.010 General powers—Municipal purpose and public use.** Any city, town, port district or county is hereby authorized and empowered by and through their appropriate corporate authorities to acquire, maintain and operate, within or without the boundaries of the counties in which such city, town or port district is situated, sites and other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes, and seaplanes for the aerial transportation of persons, property and mail or for use of military and naval aircraft, either jointly with another city, town, port district, county, the state of Washington, or the United States of America or severally, and the same is hereby declared to be a municipal purpose and a public use. [1941 c 21 § 1; Rem. Supp. 1941 § 2722–8. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

**14.07.020 Acquisition of property—Eminent domain—Exemption.** Such municipalities may also acquire by purchase, condemnation or lease, lands and other property for said purpose and dispose of such lands and other property, including property acquired by tax foreclosure proceedings, by sale or gift for public use to any city, town, port district, county, the state of Washington or the United States of America. Any city, town, port district and county is hereby empowered to acquire lands and other property for said purpose by the exercise of the power of eminent domain under the procedure that is or shall be provided by law for the

condemnation and appropriation of private property for any of their respective corporate uses, and no property shall be exempt from such condemnation, appropriation or disposition by reason of the same having been or being dedicated, appropriated, or otherwise held to public use: *Provided, however,* That nothing in this chapter shall authorize or entitle any city, town, port district or county to acquire by eminent domain any site or other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes for aerial transportation of persons, property, mail or military or naval aircraft, now or hereafter owned by any other city, town, port district or county. [1941 c 21 § 2; Rem. Supp. 1941 § 2722–9. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

**14.07.030 Appropriation of money or conveyance of property to other municipalities.** Any city, town, port district or county is authorized and empowered by and through their corporate authorities to appropriate sums of money and pay the same to any other city, town, port district or county, or deed and convey property already owned to such city, town, port district or county, for use in acquiring and maintaining sites and other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes and seaplanes for the aerial transportation of persons, property, mail or military and naval aircraft and need not require consideration other than the benefit which may be derived by the city, town, port district or county on account of the use therefor and development of such property for said purposes. [1941 c 21 § 3; Rem. Supp. 1941 § 2722–10.]

**14.07.040 Acts ratified and confirmed—Chapter cumulative.** All acts of any such municipality in the exercise or attempted exercise of any powers herein conferred are hereby ratified and confirmed. The provisions of this chapter shall be cumulative and nothing herein contained shall abridge or limit the powers of the city, town, port district or county under existing law. [1941 c 21 § 4; Rem. Supp. 1941 § 2722–11. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

### Chapter 14.08

#### MUNICIPAL AIRPORTS—1945 ACT

##### Sections

- 14.08.010 Definitions.
- 14.08.020 Airports a public purpose.
- 14.08.030 Acquisition of property and easements—Eminent domain—Encroachments prohibited.
- 14.08.070 Prior acquisition of airport property validated.
- 14.08.080 Method of defraying cost.
- 14.08.090 Issuance of bonds—Security.
- 14.08.100 Raising of funds and disposition of revenue.
- 14.08.112 Revenue bonds authorized—Purpose—Special fund—Redemption.
- 14.08.114 Issuance of funding or refunding bonds authorized.
- 14.08.116 Port district revenue bond financing powers not repealed or superseded.
- 14.08.118 Revenue warrants authorized.
- 14.08.120 Specific powers of municipalities operating airports.
- 14.08.160 Federal aid.
- 14.08.190 Establishment of airports on waters and reclaimed land.
- 14.08.200 Joint operations.
- 14.08.290 County airport districts authorized.

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| 14.08.300 | Governing body of district.   |
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*Lease of county property for airport purposes: RCW 36.34.180.*

*Lease of port district property for airport purposes: RCW 53.08.080.*

*Municipal airports—1941 act: Chapter 14.07 RCW.*

**14.08.010 Definitions.** (1) For the purpose of this chapter, unless herein specifically otherwise provided, the definitions of words, terms and phrases appearing in the state aeronautic department act of this state are hereby adopted.

(2) As used in this chapter, unless the context otherwise requires: "Municipality" means any county, city, town, or port district of this state; "airport purposes" means and includes airport, restricted landing area and other air navigation facility purposes. [1945 c 182 § 1; Rem. Supp. 1945 § 2722–30.]

**Reviser's note:** The state aeronautic department act (chapter 252, Laws of 1945) contained no definitions. It was repealed by chapter 165, Laws of 1947, codified herein as chapter 14.04 RCW.

**14.08.020 Airports a public purpose.** The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental, county and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public, governmental, county and municipal purposes and as a matter of public necessity. [1961 c 74 § 1; 1945 c 182 § 3; Rem. Supp. 1945 § 2722–32.]

**14.08.030 Acquisition of property and easements—Eminent domain—Encroachments prohibited.** (1) Every municipality is hereby authorized, through its governing body, to acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities and to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state; to make, prior to any such acquisition, investigations, surveys, and plans; to construct, install and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air

travelers; and to purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the state without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(2) Property needed by a municipality for an airport or restricted landing area, or for the enlargement of either, or for other airport purposes, may be acquired by purchase, gift, devise, lease or other means if such municipality is able to agree with the owners of said property on the terms of such acquisition, and otherwise by condemnation in the manner provided by the law under which such municipality is authorized to acquire like property for public purposes, full power to exercise the right of eminent domain for such purposes being hereby granted every municipality both within and without its territorial limits. If but one municipality is involved and the charter of such municipality prescribes a method of acquiring property by condemnation, proceedings shall be had pursuant to the provisions of such charter and may be followed as to property within or without its territorial limits. Any title to real property so acquired shall be in fee simple, absolute and unqualified in any way. The fact that the property needed has been acquired by the owner under power of eminent domain, shall not prevent its acquisition by the municipality by the exercise of the right of eminent domain herein conferred.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports or restricted landing areas acquired or operated under the provisions of this chapter, every municipality is authorized to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air spaces over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports or restricted landing areas and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power or authority to zone property adjacent to airports and restricted landing areas under the provisions of any law of this state.

(4) It shall be unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object, or plant, cause to be planted or permit to grow

higher any tree or trees or other vegetation, which shall encroach upon any airport protection privileges acquired pursuant to the provisions of this section. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances, or the municipality in charge of the airport or restricted landing area for which airport protection privileges have been acquired as in this section provided may go upon the land of others and remove any such encroachment without being liable for damages in so doing. [1945 c 182 § 2; Rem. Supp. 1945 § 2722–31. Formerly RCW 14.08.030, 14.08.040, 14.08.050, and 14.08.060.]

**Reviser's note:** Caption for 1945 c 182 § 2, reads as follows: "Municipalities may acquire airports."

**14.08.070 Prior acquisition of airport property validated.** Any acquisition of property within or without the limits of any municipality for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective. [1945 c 182 § 4; Rem. Supp. 1945 § 2722–33.]

**14.08.080 Method of defraying cost.** The cost of investigating, surveying, planning, acquiring, establishing, constructing, enlarging or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with the provisions of this chapter may be paid for by appropriation of moneys available therefor, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of the municipality shall determine. The word "cost" includes awards in condemnation proceedings and rentals where an acquisition is by lease. [1945 c 182 § 5; Rem. Supp. 1945 § 2722–34.]

**Reviser's note:** Caption for 1945 c 182 § 5 reads as follows: "Purchase price and costs of improvement may be paid from appropriations or bond issues."

**14.08.090 Issuance of bonds—Security.** Any bonds to be issued by any municipality pursuant to the provisions of this chapter shall be authorized and issued in the manner and within the limitation prescribed by the Constitution and laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for public purposes generally, secured by the revenues of the airport, a mortgage on facilities, or a general tax levy as allowed by law, provided the plan and system resolution be approved by the director of aeronautics or the department [division] of municipal corporations. [1945 c 182 § 6; Rem. Supp. 1945 § 2722–35.]

*Levy of taxes: Chapter 84.52 RCW.*

*Public contracts and indebtedness: Title 39 RCW.*

**14.08.100 Raising of funds and disposition of revenue.** (1) The governing bodies having power to appropriate moneys within the municipalities in this state for

the purpose of acquiring, establishing, constructing, enlarging, improving, maintaining, equipping or operating airports and other air navigation facilities under the provisions of this chapter, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities, moneys sufficient to carry out therein the provisions of this chapter.

(2) The revenues obtained from the ownership, control and operation of any such airport or other air navigation facility shall be used, first, to finance the maintenance and operating expenses thereof, and, second, to make payments of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. Revenues in excess of the foregoing requirements may be applied to finance the extension or improvement of the airport or other air navigation facilities, and to construct, maintain, lease, and otherwise finance buildings and facilities for industrial or commercial use: *Provided*, That such portion of the airport property to be devoted to said industrial or commercial use be first found by the governing body to be not required for airport purposes. [1959 c 231 § 1; 1945 c 182 § 7; Rem. Supp. 1945 § 2722–36. Formerly RCW 14.08.100, 14.08.110.]

**14.08.112 Revenue bonds authorized—Purpose—Special fund—Redemption.** Municipalities, including any governmental subdivision which may be hereafter authorized by law to own, control and operate an airport or other air navigation facility, are hereby authorized to issue revenue bonds to provide part or all of the funds required to accomplish the powers granted them by chapter 14.08 RCW, and to construct, acquire by purchase or condemnation, equip, add to, extend, enlarge, improve, replace and repair airports, facilities and structures thereon including but not being limited to facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and other properties incidental to the operation of airports and to pay all costs incidental thereto.

The legislative body of the municipality shall create a special fund for the sole purpose of paying the principal of and interest on the bonds of each issue, into which fund the legislative body shall obligate the municipality to pay an amount of the gross revenue derived from its ownership, control, use and operation of the airport and all airport facilities and structures thereon and used and operated in connection therewith, including but not being limited to fees charged for all uses of the airport and facilities, rentals derived from leases of part or all of the airport, buildings and any or all air navigation facilities thereon, fees derived from concessions granted, and proceeds of sales of part or all of the airport and any or all buildings and structures thereon or equipment therefor, sufficient to pay the principal and interest as the same shall become due, and to maintain adequate reserves therefor if necessary. Revenue bonds and the interest thereon shall be payable only out of and shall be a valid claim of the holder thereof only as against the special fund and the revenue pledged to it,

and shall not constitute a general indebtedness of the municipality.

Each revenue bond and interest coupon attached thereto shall name the fund from which it is payable and state upon its face that it is only payable therefrom; however, all revenue bonds and interest coupons issued under RCW 14.08.112 and 14.08.114 shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state. Each issue of revenue bonds may be bearer coupon bonds or may be registered either as to principal only or as to principal and interest; shall be in the denomination or denominations the legislative body of the municipality shall deem proper; shall be payable at the time or times and at the place or places as shall be determined by the legislative body; shall bear interest at such rate or rates as authorized by the legislative body; shall be signed on behalf of the municipality by the chairman of the board of county commissioners, mayor of the city or town, president of the port commission, and similar officer of any other municipality, shall be attested by the county auditor, the clerk or comptroller of the city or town, the secretary of the port commission, and similar officer of any other municipality, one of which signatures may be a facsimile signature, and shall have the seal of the municipality impressed thereon; each of the interest coupons attached thereto shall be signed by the facsimile signatures of said officials. Revenue bonds shall be sold in the manner as the legislative body of the municipality shall deem best, either at public or private sale.

The municipality at the time of the issuance of revenue bonds may provide covenants as it may deem necessary to secure and guarantee the payment of the principal thereof and interest thereon, including but not being limited to covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing or guaranteeing the payment of the principal and interest, to establish and maintain rates, charges, fees, rentals and sales prices sufficient to pay the principal and interest and to maintain an adequate coverage over annual debt service, to appoint a trustee for the bondholders and a trustee for the safeguarding and disbursing of the proceeds of sale of the bonds and to fix the powers and duties of the trustee or trustees, and to make any and all other covenants as the legislative body may deem necessary to its best interest and that of its inhabitants to accomplish the most advantageous sale possible of the bonds. The legislative body may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with revenue bonds being issued and sold.

The legislative body of the municipality may include an amount for working capital and an amount necessary for interest during the period of construction of the airport or any facilities plus six months, in the principal amount of any revenue bond issue; if it deems it to be the best interest of the municipality and its inhabitants, it may provide in any contract for the construction or acquisition of an airport or facilities that payment therefor shall be made only in revenue bonds at the par value thereof.

If the municipality or any of its officers shall fail to carry out any of its or their obligations, pledges or covenants made in the authorization, issuance and sale of bonds, the holder of any bond or the trustee may bring action against the municipality and/or said officers to compel the performance of any or all of the covenants. [1970 ex.s. c 56 § 3; 1969 ex.s. c 232 § 2; 1957 c 53 § 1.]

~~Purpose~~—1970 ex.s. c 56: See note following RCW 39.44.030.

**14.08.114 Issuance of funding or refunding bonds authorized.** When any municipality has outstanding revenue bonds or warrants payable solely from revenues derived from the ownership, control, use and operation of the airport and all its facilities and structures thereon used and operated in connection therewith, the legislative body thereof may provide for the issuance of funding or refunding bonds to fund or refund outstanding warrants or bonds or any part thereof at or before maturity, and may combine various outstanding warrants and various series and issues of outstanding bonds in the amount thereof to be funded or refunded and may issue funding or refunding bonds to pay any redemption premium and interest payable on the outstanding revenue warrants or bonds being funded or refunded. The legislative body of the municipality shall create a special fund for the sole purpose of paying the principal of and interest on funding or refunding bonds, into which fund the legislative body shall obligate the municipality to pay an amount of the gross revenue derived from its ownership, control, use and operation of the airport and all airport facilities and structures thereon as provided in RCW 14.08.112, sufficient to pay the principal and interest as the same shall become due, and to maintain adequate reserves therefor if necessary. Bonds and the interest thereon shall be payable only out of and shall be a valid claim of the holder thereof only as against the special fund and the revenue pledged to it, and shall not constitute a general indebtedness of the municipality.

The net interest cost to maturity on funding or refunding bonds shall be at such rate or rates as shall be authorized by the legislative body.

The municipality may exchange funding or refunding bonds at par for the warrants or bonds which are being funded or refunded, or it may sell the funding or refunding bonds in the manner as it shall deem for the best interest of the municipality and its inhabitants, either at public or private sale. Funding or refunding bonds shall be governed by and issued under and in accordance with the provisions of RCW 14.08.112 with respect to revenue bonds unless there is a specific provision to the contrary in this section. [1970 ex.s. c 56 § 4; 1969 ex.s. c 232 § 3; 1957 c 53 § 2.]

~~Purpose~~—1970 ex.s. c 56: See note following RCW 39.44.030.

**14.08.116 Port district revenue bond financing powers not repealed or superseded.** Nothing in RCW 14.08.112 and 14.08.114 shall repeal or supersede revenue bond financing powers otherwise granted to port districts under the provisions of chapter 53.40 RCW. [1957 c 53 § 3.]

**14.08.118 Revenue warrants authorized.** Municipalities, including any governmental subdivision which may be hereafter authorized by law to own, control and operate an airport, or other air navigation facility, may issue revenue warrants for the same purposes for which they may issue revenue bonds, and the provisions of RCW 14.08.112 as now or hereafter amended relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such revenue warrants.

Revenue warrants so issued shall not constitute a general indebtedness of the municipality. [1971 ex.s. c 176 § 1.]

**14.08.120 Specific powers of municipalities operating airports.** In addition to the general powers in this chapter conferred, and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purpose or purposes is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation and regulation thereof in an officer, a board or body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board or body; and such municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of such municipality by an ordinance or resolution which shall include (a) the terms of office not to exceed six years which terms shall be staggered so that not more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of such construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation and regulation shall be a responsibility of the municipality.

(2) To adopt and amend all needful rules, regulations and ordinances for the management, government and use of any properties under its control, whether within or without the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of said rules, regulations and ordinances, and enforce said penalties in the same manner in which penalties prescribed by other rules, regulations and ordinances of the municipality are enforced. For

the purposes of such management and government and direction of public use. such part of all highways, roads, streets, avenues, boulevards, and territory as adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter shall be under like control and management of the municipality. It may also adopt and enact rules, regulations and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They must conform to and be consistent with the laws of this state and the rules and regulations of the aeronautics commission of the state and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) Municipalities operating airports may create a special airport fund, and provide that all receipts from the operation of such airports be deposited in such fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for future maintenance, construction or operation of airports or airport facilities.

(4) To lease such airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department of either thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department of either thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services and facilities: *Provided*, That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Such municipality acting through its governing body may sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft take-offs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subdivision (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs or related aeronautic purposes: *Provided*, That if there is a finding by the governing body of the municipality that

any airport property, real or personal, is not required for aircraft landings, aircraft takeoffs or related aeronautic purposes, then the municipal airport commission may lease such space, land, area or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area or improvements, all for industrial or commercial purposes, by private negotiation and under such terms and conditions as to the municipal airport commission may seem just and proper: *Provided*, That any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing or industrial purpose or operation relating to, identified with or in any way dependent upon the use, operation or maintenance of the airport, or for any commercial or industrial purpose may be made for any period not to exceed seventy-five years: *And provided further*, That any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five year period thereafter, to be readjusted at the commencement of each such period, if written request for such readjustment is given by either party to the other at least thirty days before the commencement of the five year period in respect of which such readjustment is requested. If in such event the parties cannot agree upon the rentals for such five year period they shall submit to have the disputed rentals for such five year period adjusted by arbitration. The lessee shall pick one arbitrator and the governing body of the municipality one, and the two so chosen shall select a third, and such board of arbitrators after a review of all pertinent facts may increase or decrease such rentals, or continue the previous rate thereof.

The proceeds of sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. In the event all the proceeds of sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: *Provided*, That in all cases the public is not deprived of its rightful, equal and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To exercise all powers necessarily incidental to the exercise of the general and special powers herein granted. [1961 c 74 § 2; 1959 c 231 § 2; 1957 c 14 § 1. Prior: 1953 c 178 § 1; 1945 c 182 § 8; Rem. Supp. 1945

§ 2722-37. Formerly RCW 14.08.120 through 14.08.150 and 14.08.320.]

**Continuation of existing law—1957 c 14:** "The provisions of section 1 of this act shall be construed as a restatement and continuation of existing law, and not as a new enactment. It shall not be construed as affecting any existing right acquired under its provisions, nor as affecting any proceeding instituted thereunder." [1957 c 14 § 2.] This applies to RCW 14.08.120.

**Validating—1957 c 14:** "The provisions of section 1 of this act are retroactive and any actions or proceedings had or taken under the provisions of RCW 14.08.120 through 14.08.150 or 14.08.320 are hereby ratified, validated and confirmed." [1957 c 14 § 3.]

*Appointment of police officers by port districts operating airports:*  
RCW 53.08.280.

**14.08.160 Federal aid.** (1) A municipality is authorized to accept, receive, and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities.

(2) The governing body of any municipality is authorized to designate the director of aeronautics of the state as its agent to accept, receive, and receipt for federal moneys in its behalf for airport purposes and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of such airports, or other air navigation facilities, and may enter into an agreement with the director of aeronautics prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and applicable laws of this state. Such moneys as are paid over by the United States government shall be paid over to said municipality under such terms and conditions as may be imposed by the United States government in making such grant.

(3) All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports or other air navigation facilities, made by the municipality itself or through the agency of the director of aeronautics of the state, shall be made pursuant to the laws of this state governing the making of like contracts: *Provided, however*, That where such acquisition, construction, improvement, enlargement, maintenance, equipment or operation is financed wholly or partly with federal moneys the municipality, or the aeronautics commission as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary. [1945 c 182 § 9; Rem. Supp. 1945 § 2722-38. Formerly RCW 14.08.160, 14.08.170, and 14.08.180.]

**14.08.190 Establishment of airports on waters and reclaimed land.** (1) The powers herein granted to a municipality to establish and maintain airports shall include the power to establish and maintain such airports in, over and upon any public waters of this state within



the limits or jurisdiction of or bordering on the municipality, any submerged land under such public waters, and any artificial or reclaimed land which before the artificial making or reclamation thereof constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport.

(2) All the other powers herein granted municipalities with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, and artificial or reclaimed land. [1945 c 182 § 10; Rem. Supp. 1945 § 2722-39.]

**14.08.200 Joint operations.** (1) All powers, rights and authority granted to any municipality in this chapter may be exercised and enjoyed by two or more municipalities, or by this state and one or more municipalities therein, acting jointly, either within or without the territorial limits of either or any of said municipalities and within or without this state, or by this state or any municipality therein acting jointly with any other state or municipality therein, either within or without this state: *Provided*, The laws of such other state permit such joint action.

(2) For the purposes of this section only, unless another intention clearly appears or the context otherwise requires, this state shall be included in the term "municipality," and all the powers conferred upon municipalities in this chapter, if not otherwise conferred by law, are hereby conferred upon this state when acting jointly with any municipality or municipalities. Where reference is made to the "governing body" of a municipality, that term shall mean, as to the state, its director of aeronautics.

(3) Any two or more municipalities may enter into agreements with each other, duly authorized by ordinances or resolution, as may be appropriate, for joint action pursuant to the provisions of this section. Concurrent action by the governing bodies of the municipalities involved shall constitute joint action.

(4) Each such agreement shall specify its terms; the proportionate interest which each municipality shall have in the property, facilities and privileges involved, and the proportion of preliminary costs, cost of acquisition, establishment, construction, enlargement, improvement and equipment, and of expenses of maintenance, operation and regulation to be borne by each, and make such other provisions as may be necessary to carry out the provisions of this section. It shall provide for amendments thereof and for conditions and methods of termination; for the disposition of all or any part of the property, facilities and privileges jointly owned if said property, facilities and privileges, or any part thereof, shall cease to be used for the purposes herein provided or if the agreement shall be terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and the assumption

or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

(5) Municipalities acting jointly as herein authorized shall create a board from the inhabitants of such municipalities for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled, and operated. Such board shall consist of members to be appointed by the governing body of each municipality involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time and upon such terms as to compensation, if any, as may be provided for in the agreement.

(6) Each such board shall organize, select officers for terms to be fixed by the agreement, and adopt and from time to time amend rules of procedure.

(7) Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of such municipalities granted by this chapter, except as herein provided. Real property, airports, restricted landing areas, air protection privileges, or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by approval of the governing bodies of each of the municipalities involved; upon the approval of the governing body, or if no approval be necessary then upon the board's own determination, such property may be acquired by private negotiation under such terms and conditions as to the board may seem just and proper. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each on or before the preceding December 1st, of a budget for the ensuing calendar year, which budget may be amended or supplemented by joint resolution of the municipalities involved during the calendar year for which the original budget was approved. Rules and regulations provided for by RCW 14.08.120 (2) shall become effective only upon approval of each of the appointing governing bodies. No real property and no airport, other navigation facility, or air protection privilege, owned jointly, shall be disposed of by the board by sale except by authority of all the appointing governing bodies, but the board may lease space, land area or improvements and grant concessions on airports for aeronautical purposes, or other purposes which will not interfere with the aeronautical purposes of such airport, air navigation facility or air protection privilege by private negotiation under such terms and conditions as to the board may seem just and proper, subject to the provisions of RCW 14.08.120(4). Subject to the provisions of the agreement for the joint venture, and when it shall appear to the board to be in the best interests of the municipalities involved, the board may sell any personal property by private negotiations under such terms and conditions as to the board may seem just and proper.



(8) Each municipality, acting jointly with another, pursuant to the provisions of this section is authorized and empowered to enact, concurrently with the other municipalities involved, such ordinances as are provided for by RCW 14.08.120(2), and to fix by such ordinances penalties for the violation thereof, which ordinances when so concurrently adopted, shall have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or without the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of said municipalities in like manner as are its individual ordinances. The consent of the state director of aeronautics to any such ordinance, where the state is a party to the joint venture, shall be equivalent to the enactment of the ordinance by a municipality. The publication provided for in RCW 14.08.120(2), aforesaid, shall be made in each municipality involved in the manner provided by law or charter for publication of its individual ordinances.

(9) Condemnation proceedings shall be instituted, in the names of the municipalities jointly, and the property acquired shall be held by the municipalities as tenants in common. The provisions of RCW 14.08.030(2) shall apply to such proceedings.

(10) For the purpose of providing funds for necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which each of the municipalities involved shall deposit its proportionate share as provided by the joint agreement, such funds to be provided for by bond issues, tax levies and appropriations made by each municipality in the same manner as though it were acting separately under the authority of this chapter, and into which shall be paid the revenues obtained from the ownership, control and operation of the airports and other air navigation facilities jointly controlled, to be expended as provided in this chapter; revenues in excess of cost of maintenance and operating expenses of the joint properties to be divided or allowed to accumulate for future anticipated expenditures as may be provided in the original agreement, or amendments thereto, for the joint venture. The action of municipalities involved in heretofore permitting such revenues to so accumulate is declared to be legal and valid.

(11) All disbursements from such fund shall be made by order of the board in accordance with such rules and regulations and for such purposes as the appointing governing bodies, acting jointly, shall prescribe.

(12) Specific performance of the provisions of any joint agreement entered into as provided for in this section may be enforced as against any party thereto by the other party or parties thereto. [1967 c 182 § 1; 1949 c 120 § 1; 1945 c 182 § 11; Rem. Supp. 1949 § 2722-40. Formerly RCW 14.08.200 through 14.08.280.]

*Joint operations by municipal corporations or political subdivisions, deposit and control of funds: RCW 43.09.285.*

**14.08.290 County airport districts authorized.** The establishment of county airport districts is hereby authorized. Written application for the formation of such

a district signed by at least one hundred registered voters, who reside and own real estate in the proposed districts, shall be filed with the board of county commissioners. The board shall immediately transmit the application to the proper registrar of voters for the proposed district who shall check the names, residence and registration of the signers with the records of his office and shall, as soon as possible, certify to said board the number of qualified signers. If the requisite number of signers is so certified, the board shall thereupon place the proposition: "Shall a county airport district be established in the following area: (describing the proposed district)?" upon the ballot for vote of the people of the proposed district at the next election, general or special. If a majority of the voters on such proposition shall vote in favor of the proposition, the board, shall, by resolution, declare the district established. If the requisite number of qualified persons have not signed the application, further signatures may be added and certified until the requisite number have signed and the above procedure shall be thereafter followed.

The area of such district may be the area of the county including incorporated cities and towns, or such portion or portions thereof as the board may determine to be the most feasible for establishing an airport. When established, an airport district shall be a municipality as defined in this chapter and entitled to all the powers conferred by this chapter and exercised by municipal corporations in this state. The airport district is hereby empowered to levy not more than seventy-five cents per thousand dollars of assessed value of the property lying within the said airport district: *Provided, however,* Such levy shall not be made unless first approved at any election called for the purpose of voting on such levy. [1973 1st ex.s. c 195 § 1; 1949 c 194 § 1; 1945 c 182 § 12; Rem. Supp. 1949 § 2722-41.]

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

**14.08.300 Governing body of district.** The governing body of a county airport district shall be the board of county commissioners except as in this chapter provided. [1951 c 114 § 1; 1945 c 182 § 13; Rem. Supp. 1945 § 2722-42.]

**14.08.302 Board of airport district commissioners—Petition—Order establishing.** One hundred or more registered voters in any county airport district may make, sign and file a petition with the board of county commissioners asking that thereafter the airport district be governed by a board of airport district commissioners. Within ten days after receipt of such petition, the board of county commissioners shall check the petition. If the petition be found adequate and to be signed by the prescribed number of legal voters, the board of county commissioners shall within a reasonable time call a public hearing, notice of which shall be given by publication one week in advance thereof in a newspaper circulating within the district, at which arguments shall be heard for or against the proposal and if it shall appear to the county commissioners that the

residents of the district so desire they shall enter an order declaring that the county airport district shall be governed by a board of three airport district commissioners. [1951 c 114 § 2.]

**14.08.304 Board of airport district commissioners—Members—Election—Terms—Expenses.** The board of airport district commissioners shall consist of three members, who shall each be a registered voter and actually a resident of the district. The first commissioners shall be appointed by the board of county commissioners. The term of office of airport district commissioners shall be two years, or until their successors are elected and qualified. Members of the board of airport district commissioners shall be elected at each regular general election on a nonpartisan basis. They shall be nominated by petition of ten registered voters of the district. The elected members of the board of airport district commissioners shall take office as soon as they have been certified as elected by the election board. Vacancies on the board of airport district commissioners shall be filled by appointment by the remaining commissioners. Members of the board of airport district commissioners shall receive no compensation for their services, but shall be reimbursed for actual necessary traveling and sustenance expenses incurred while engaged on official business. [1951 c 114 § 3.]

*Nonpartisan primaries and elections: Chapter 29.21 RCW.*

**14.08.310 Assistance to other municipalities.** Whenever the governing body of any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality in exercising the powers and authority granted by this chapter, such first-mentioned municipality is expressly authorized and empowered to furnish such assistance by gift, or lease with or without rental, of real property, by the donation, lease with or without rental, or loan, of personal property, and by the appropriation of moneys, which may be provided for by taxation or the issuance of bonds in the same manner as funds might be provided for the same purposes if the municipality were exercising the powers heretofore granted in its own behalf. [1945 c 182 § 14; Rem. Supp. 1945 § 2722-43.]

**14.08.330 Jurisdiction exclusive.** Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of this chapter, shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it and no other municipality in which such airport or air navigation facility shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations thereon. Such municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in RCW 14.08.120(2). [1945 c 182 § 15; Rem. Supp. 1945 § 2722-44.]

**14.08.340 Interpretation and construction.** This act shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of aeronautics. [1945 c 182 § 17; Rem. Supp. 1945 § 2722-46.]

**14.08.350 Severability—1945 c 182.** If any provision of this act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1945 c 182 § 16.]

**14.08.360 Short title.** This act may be cited as the "Revised Airports Act." [1945 c 182 § 18.]

**14.08.370 Repeal.** All acts and parts of acts in conflict with this act are hereby repealed. [1945 c 182 § 19.]

## Chapter 14.12 AIRPORT ZONING

### Sections

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*Planning commissions: Chapter 35.63 RCW.*

**14.12.010 Definitions.** As used in this chapter, unless the context otherwise requires:

(1) "Airports" means any area of land or water designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

(2) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(4) "Political subdivision" means any county, city, town, port district or other municipal or quasi municipal corporation authorized by law to acquire, own or operate an airport.

(5) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, including the state and its political subdivisions, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth. [1945 c 174 § 1; Rem. Supp. 1945 § 2722-15.]

**14.12.020 Airport hazards contrary to public interest.**

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (2) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (3) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein. [1945 c 174 § 2; Rem. Supp. 1945 § 2722-16.]

**14.12.030 Power to adopt airport zoning regulations.**

(1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed. [1945 c 174 § 3; Rem. Supp. 1945 § 2722-17. Formerly RCW 14.12.030 and 14.12.040.]

**14.12.050 Relation to comprehensive zoning regulations.** (1) Incorporation. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) Conflict. In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail. [1945 c 174 § 4; Rem. Supp. 1945 § 2722-18. Formerly RCW 14.12.050 and 14.12.060.]

**14.12.070 Procedure for adoption of zoning regulations.** (1) Notice and hearing. No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided for in RCW 14.12.030(2), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

(2) Airport zoning commission. Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission. [1945 c 174 § 5; Rem. Supp. 1945 § 2722-19. Formerly RCW 14.12.070 and 14.12.080.]

*Public meetings: Chapter 42.30 RCW.*

**14.12.090 Airport zoning requirements.** (1) Reasonableness. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the

character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) Nonconforming uses. No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in RCW 14.12.110(3). [1945 c 174 § 6; Rem. Supp. 1945 § 2722–20. Formerly RCW 14.12.090 and 14.12.100.]

**14.12.110 Permits and variances.** (1) Permits. Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

(2) Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter: *Provided*, That any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) Hazard marking and lighting. In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard. [1945 c 174 § 7; Rem. Supp. 1945 § 2722–21. Formerly RCW 14.12.110, 14.12.120, and 14.12.130.]

**14.12.140 Board of adjustment.** (1) All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in RCW 14.12.190.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under RCW 14.12.110(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record. [1945 c 174 § 10; Rem. Supp. 1945 § 2722–24. Formerly RCW 14.12.140, 14.12.150, 14.12.160 and 14.12.170.]

**14.12.180 Administration of airport zoning regulations.** All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under RCW 14.12.110(1), but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment. [1945 c 174 § 9; Rem. Supp. 1945 § 2722–23.]

**14.12.190 Appeals.** (1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this chapter, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision or [of] such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by order of the board or notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken. [1945 c 174 § 8; Rem. Supp. 1945 § 2722-22.]

**14.12.200 Judicial review.** (1) Any person aggrieved, or taxpayer affected, by any decision of the board of adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a board of adjustment is illegal, may present to the superior court of the county in which the airport is located a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the decision is filed in the office of the board.

(2) Upon presentation of such petition the court may allow a writ of review directed to the board of adjustment to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a supersedeas.

(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall

be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

(6) In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land. [1945 c 174 § 11; Rem. Supp. 1945 § 2722-25.]

**14.12.210 Enforcement and remedies.** Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter, shall constitute a misdemeanor, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto. [1945 c 174 § 12; Rem. Supp. 1945 § 2722-26.]

**14.12.220 Acquisition of air rights.** In any case in which: (1) It is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within

which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, avigation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter. [1945 c 174 § 13; Rem. Supp. 1945 § 2722-27.]

**14.12.900 Severability—1945 c 174.** If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1945 c 174 § 14.]

**14.12.910 Short title.** This act shall be known and may be cited as the "Airport Zoning Act." [1945 c 174 § 15.]

## Chapter 14.16 AIRCRAFT AND AIRMAN REGULATIONS

### Sections

|           |   |
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| 14.16.010 | Definitions.  |
| 14.16.020 | Federal licensing of aircraft required.                     |
| 14.16.030 | Federal licensing of airmen.                                |
| 14.16.040 | Possession of license.                                      |
| 14.16.050 | Traffic rules.  |
| 14.16.060 | Penalty.  |
| 14.16.080 | Downed aircraft rescue transmitter required—<br>Exceptions. |
| 14.16.900 | Severability—1929 c 157.                                    |

**14.16.010 Definitions.** In this chapter "aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. The term "airman" means any individual (including the person in command and any pilot, mechanic or member of the crew) who engages in the navigation of aircraft while under way and any individual who is in charge of the inspection, overhauling, or repairing of aircraft. "Operating aircraft" means performing the services of aircraft pilot. "Person" means any individual, proprietorship, partnership, corporation, or trust. "Downed aircraft rescue transmitter" means a transmitter of a type approved by the Washington state aeronautics commission or the federal aviation agency with sufficient transmission power and reliability that it will be automatically activated upon the crash of an aircraft so as to transmit a signal on a preset frequency such that it will be effective to assist in the location of the downed aircraft. "Air school" means air school as defined in RCW 14.04.020(11). [1969 ex.s. c 205 § 1; 1929 c 157 § 1; RRS § 2722-1.]

**14.16.020 Federal licensing of aircraft required.** The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States government with respect to navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to navigate any aircraft within this state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force: *Provided, however,* That for the first thirty days after entrance into this state this section shall not apply to aircraft owned by a nonresident of this state other than aircraft carrying persons or property for hire, if such aircraft is licensed and registered and displays identification marks in compliance with the laws of the state, territory or foreign country of which its owner is a resident. [1929 c 157 § 2; RRS § 2722-2.]

*Aircraft certificates required: RCW 14.04.230.*

*Federal aviation program: Title 49, chapter 20, U.S.C.*

**14.16.030 Federal licensing of airmen.** The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that a person serving as an airman within this state should have the qualifications necessary for obtaining and holding the class of license required by the United States government with respect to such an airman subject to its jurisdiction, it shall be unlawful for any person to serve as an airman within this state unless he have such a license: *Provided, however,* That for the first thirty days after entrance into this state this section shall not apply to nonresidents of this state operating aircraft within this state, other than aircraft carrying persons or property for hire, if such person shall have fully complied with the laws of the state, territory or foreign country of his residence respecting the licensing of airmen. [1929 c 157 § 3; RRS § 2722-3.]

*Airman certificates required: RCW 14.04.230.*

*Federal aviation program: Title 49, chapter 20, U.S.C.*

**14.16.040 Possession of license.** The certificate of the license herein required shall be kept in the personal possession of the licensee when he is serving as an airman within this state, and must be presented for inspection upon the demand of any passenger, any peace officer of this state, or any official, manager, or person in charge of any airport or landing field in this state upon which he shall land. [1929 c 157 § 4; RRS § 2722-4.]

**14.16.050 Traffic rules.** The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that any person operating aircraft within this state should conform to the air traffic rules now or hereafter established by the secretary of commerce of the United States for the navigation of aircraft subject to the jurisdiction of the United States, it shall be unlawful for any person to



navigate any aircraft within this state otherwise than in conformity with said air traffic rules. [1929 c 157 § 5; RRS § 2722-5.]

*Federal aviation program: Title 49, chapter 20, U.S.C.*

**14.16.060 Penalty.** Any person who violates any provision of this chapter shall be guilty of an offense punishable by a fine of not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment. [1929 c 157 § 6; RRS § 2722-6.]

**14.16.080 Downed aircraft rescue transmitter required—Exceptions.** Any aircraft used to carry persons or property for compensation after January 1, 1970 shall be equipped with a downed aircraft rescue transmitter and it shall be unlawful for any person to operate such aircraft without such a transmitter: *Provided, however,* Nothing in this section shall apply to (1) The rental or lease of an aircraft without a pilot; (2) Instructional flights by an air school; (3) Aircraft owned by and used exclusively in the service of the United States government; (4) Aircraft registered under the laws of a foreign country; (5) Aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft; and (6) Aircraft used by any air carrier or supplemental air carrier operating in accordance with the provisions of a certificate of public conveyance and necessity under the provisions of the Federal Aviation Act of 1958, Public Law 85-726, as amended. [1969 ex.s. c 205 § 2.]

**14.16.900 Severability—1929 c 157.** If any provision of this act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the application of such provision to other persons and circumstances shall not be affected thereby. [1929 c 157 § 7.]

## Chapter 14.20 AIRCRAFT DEALERS

### Sections

|           |   |
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| 14.20.010 | Definitions.  |
| 14.20.020 | Application for license.  |
| 14.20.030 | Application for license—Contents.   |
| 14.20.040 | Certificates.   |
| 14.20.050 | License and certificate fees.   |
| 14.20.060 | Payment of fees—Fund—Possession and display of licenses and certificates. |
| 14.20.070 | Surety bonds.   |
| 14.20.080 | Branches and subagencies.   |
| 14.20.090 | Denial, suspension, revocation of license.                                |
| 14.20.100 | Appeal from director's order.   |

*Aircraft excise tax: Chapter 82.48 RCW.*

**14.20.010 Definitions.** When used in this chapter and RCW 14.04.250 and 82.48.100:

- (1) "Person" includes a firm, partnership, or corporation;
- (2) "Dealer" means a person engaged in the business of selling, exchanging, or acting as a broker of aircraft;

(3) "Aircraft" means any weight-carrying device or structure for navigation of the air, designed to be supported by the air, but which is heavier than air and is mechanically driven;

(4) "Director" means the director of aeronautics. [1955 c 150 § 1.]

**Reviser's note:** 1955 c 150 created the sections codified herein as chapter 14.20 RCW, and also amended RCW 14.04.250 and 82.48.100 referred to above.

**14.20.020 Application for license.** Any person desiring to apply for an aircraft dealer's license shall do so at the office of the director on a form provided for that purpose by him. [1955 c 150 § 2.]

**14.20.030 Application for license—Contents.** Applications for an aircraft dealer's license shall contain:

(1) The name under which the dealer's business is conducted and the address of the dealer's established place of business;

(2) The residence address of each owner, director, or principal officer of the aircraft dealer, and, if a foreign corporation, the state of incorporation and names of its resident officers or managers;

(3) The make or makes of aircraft for which franchised, if any;

(4) Whether or not used aircraft are dealt in;

(5) A certificate that the applicant is a dealer having an established place of business at the address shown on the application, which place of business is open during regular business hours to inspection by the director or his representatives; and

(6) Whether or not the applicant has ever been denied an aircraft dealer's license or has had one which has been denied, suspended, or revoked. [1955 c 150 § 3.]

**14.20.040 Certificates.** During such time as aircraft are held by a dealer for sale, exchange, delivery, test or demonstration purposes solely as stock in trade of the dealer's business, an aircraft dealer's certificate may be used on said aircraft in lieu of any registration certificate or fee and in lieu of payment of any excise tax. The director shall issue one aircraft dealer's certificate with each aircraft dealer's license. Additional aircraft dealer's certificates shall be issued to an aircraft dealer upon request and the payment of the fee hereinafter provided for. Nothing herein contained, however, shall be construed to prevent transferability among dealer aircraft of any aircraft dealer's certificate, and such certificate need be displayed on dealer aircraft only while in actual use or flight. Every aircraft dealer's certificate issued shall expire on December 31st, and may be renewed upon renewal of an aircraft dealer's license. [1955 c 150 § 4.]

**14.20.050 License and certificate fees.** The fee for original aircraft dealer's license for each calendar year or fraction thereof shall be twenty-five dollars which shall include one aircraft dealer's certificate and which may be renewed annually for a fee of ten dollars. Additional aircraft dealer certificates may be obtained for



two dollars each per year. If any dealer shall fail or neglect to apply for renewal of his license prior to February 1st in each year, his license shall be declared canceled by the director, in which case any such dealer desiring a license shall apply for an original license and pay the fee required for such original license. [1955 c 150 § 5.]

**14.20.060 Payment of fees—Fund—Possession and display of licenses and certificates.** The fees set forth in RCW 14.20.050 shall be payable to and collected by the director. The fee for any calendar year may be paid on and after the first day of December of the preceding year. The director shall give appropriate receipts therefor. The fees collected under this chapter shall be credited to the general fund. The director may prescribe requirements for the possession and exhibition of aircraft dealer's licenses and aircraft dealer's certificates. [1955 c 150 § 6.]

**14.20.070 Surety bonds.** Before issuing an aircraft dealer license, the director shall require the applicant to file with said director a surety bond in the amount of four thousand dollars running to the state, and executed by a surety company authorized to do business in the state. Such bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his business in conformity with the provisions of this chapter, RCW 14.04.250 and 82.48.100. Any person who shall have suffered any loss or damage by reason of any act by a dealer which constitutes ground for refusal, suspension, or revocation of license under RCW 14.20.090 shall have an action against such aircraft dealer and the surety upon such bond. Successive recoveries against said bond shall be permitted but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. [1955 c 150 § 7.]

*Corporate sureties: Chapter 48.28 RCW.*

**14.20.080 Branches and subagencies.** Every dealer maintaining a branch or subagency in another city or town in this state shall be required to have a separate aircraft dealer's license for such branch or subagency, in the same manner as though each constituted a separate and distinct dealer. [1955 c 150 § 8.]

**14.20.090 Denial, suspension, revocation of license.** The director shall refuse to issue an aircraft dealer's license or shall suspend or revoke an aircraft dealer's license whenever he has reasonable grounds to believe that such dealer has:

(1) Forged or altered any federal certificate, permit, rating or license, relating to ownership and airworthiness of an aircraft;

(2) Sold or disposed of an aircraft which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(3) Wilfully misrepresented any material fact in the application for an aircraft dealer's license, aircraft dealer's certificate, or registration certificate;

(4) Wilfully withheld or caused to be withheld from a purchaser of aircraft any document referred to in subsection (1) hereof if applicable, or an affidavit to the effect that there are no liens, mortgages or encumbrances of any type on the aircraft other than noted thereon, if such document or affidavit has been requested by the purchaser;

(5) Suffered or permitted the cancellation of his bond or the exhaustion of the penalty thereof;

(6) Used an aircraft dealer's certificate for any purpose other than those permitted by this chapter, RCW 14.04.250 and 82.48.100. [1955 c 150 § 9.]

**14.20.100 Appeal from director's order.** Should the director make an order that any person is not entitled to an aircraft dealer's license or that an existing license should be suspended or revoked, he shall forthwith notify the applicant or dealer in writing. The applicant shall have thirty days from the date of the director's order to appeal therefrom to the superior court of Thurston county which he may do by filing a notice of such appeal with the clerk of said superior court and at the same time filing a copy of such notice with the director. [1955 c 150 § 10.]

**Chapter 14.30  
WESTERN REGIONAL SHORT HAUL AIR  
TRANSPORTATION COMPACT  
[SEE CHAPTER 81.96 RCW.]**

# TITLE 15

## AGRICULTURE AND MARKETING

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 Trade fairs, state: RCW 43.31.790–43.31.860.  
 Washington clean air act: Chapter 70.94 RCW.  
 Weather modification and control: Chapter 43.37 RCW.  
 Weeds: Title 17 RCW.  
 Weeds, destruction by cities: RCW 35.21.310.  
 Weights and measures: Chapters 19.92, 19.94 RCW.  
 Weights and measures, false: RCW 9.45.120.  
 Weights and measures, standards, packages, boxes, etc.: Chapter 19.94 RCW.

### Chapter 15.04 GENERAL PROVISIONS

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 Bacon, packaging at retail to reveal quality and leanness, director's duties: RCW 69.04.205 through 69.04.207.

**15.04.010 Definitions.** As used in this title except where otherwise defined:

"Department" means the department of agriculture.

"Director" means the director of agriculture.

"Person" includes any individual, firm, corporation, trust, association, cooperative, copartnership, society, any other organization of individuals, and any other business unit, device, or arrangement. [1961 c 11 § 15.04.010. Prior: (i) 1941 c 56 § 3; Rem. Supp. 1941 § 2828–4. (ii) 1941 c 56 § 4; Rem. Supp. 1941 § 2828–5. (iii) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part.]

**15.04.020 Director's general duties and powers.** The director shall:

(1) Arrange for and hold meetings for the discussion and dissemination of information as to horticultural subjects and for demonstration of methods of preventing and eradicating diseases and pests injurious to horticultural plants, fruits, and vegetables;

(2) Publish and distribute circulars and reports on horticultural subjects, pests affecting, and diseases of horticultural plants, fruits, vegetables, and nursery stock, and means of controlling, curing, removing, eradicating, and disinfecting such diseases and pests;

(3) Furnish to the board of county commissioners of each county annually, on or before September 1st, an estimate of the expenses for the ensuing year of inspecting and disinfecting the horticultural plants, fruits, vegetables and nursery stock and the places in the county where grown, packed, stored, shipped, held for shipment or delivery, or offered for sale;

(4) Appoint inspectors to enforce and carry out the provisions of this title, who may be of two classes: Inspectors—at-large and local inspectors, but no more than twenty inspectors—at-large shall be appointed;

(5) Adopt, promulgate and enforce such rules and regulations as are necessary to or will facilitate his carrying out of the horticultural laws he is authorized and directed to administer and enforce;

(6) Adopt, promulgate and enforce rules and regulations:

(a) governing the grading, packing, and size and dimensions of commercial containers of fruits, vegetables, and nursery stock;

(b) fixing commercial grades of fruits, vegetables and nursery stock, and providing for the inspection thereof and issuance of certificates of inspection therefor;

(c) for the inspection, grading and certifying of growing crops of agricultural and vegetable seeds and the fixing and collecting of fees for such services;

(d) covering the collection of native plants and parts thereof, and when the manner of collection is destructive of the plants, prohibiting such collecting;

(e) establishing quarantine measures and methods for the protection of agricultural and horticultural crops and products and the control or eradication of pests and diseases injurious thereto;

(f) he may appoint any officer or member of a local fruit protective association to act as inspector, vested with power only to enter premises and inspect orchards and report to the inspector-at-large. Such inspectors shall receive no compensation for services and need not take the regular examination required of other inspectors. [1961 c 11 § 15.04.020. Prior: (i) 1943 c 150 § 2, part; 1927 c 311 § 2, part; 1921 c 141 § 2, part; 1919 c 195 § 1, part; 1915 c 166 § 2, part; Rem. Supp. 1943 § 2840, part. (ii) 1941 c 20 § 15; 1935 c 168 § 3; Rem. Supp. 1941 § 2849-2f.]

*Director member of advisory council on nuclear energy and radiation: RCW 70.98.070.*

**15.04.030 Duties and powers of director, supervisor and inspectors.** The director, supervisor and horticultural inspectors shall:

(1) Inspect all horticultural premises, fruits, vegetables, nursery stock, horticultural supplies, and other properties which are subject to infection by pests or diseases; require the owners or persons in charge of any infected property to disinfect the same; disinfect the same in case the owner or person in charge fails, after notice, to do so; condemn and destroy properties which cannot be successfully disinfected; have free access to any such premises or properties at any time;

(2) Require all such products held for shipment which are partially infected, to be sorted and repacked, and if the owner or person in charge after notice fails to do so, they shall condemn and destroy them: *Provided*, That no inspector shall destroy more than ten percent of any variety of nursery stock in any lot or shipment of fifty or more trees, vines, or shrubs without five days' notice to the shipper, during which time the owner or shipper may appeal to the supervisor;

(3) At the request of the owner, inspect his fruit, vegetables, and nursery stock and all other horticultural plants and products and premises where growing or grown, for diseases and pests, and report to him the result of such investigation and prescribe proper remedies;

(4) Issue certificates of inspection to licensed nurserymen and dealers in nursery stock, on stock inspected and approved; and

(5) Inspect or audit, during business hours, the records of any grower or dealer in nursery stock, to determine the kind of license required by him. [1961 c 11 § 15.04.030. Prior: 1943 c 150 § 2, part; 1927 c 311 § 2, part; 1921 c 141 § 2, part; 1919 c 195 § 1, part; 1915 c 166 § 2, part; Rem. Supp. 1943 § 2840, part.]

**15.04.040 Inspectors-at-large—Qualifications—Work assignments—Compensation.** Inspectors-at-large shall pass such an examination by the director as will satisfy him they are qualified in knowledge and experience to carry on the work in the districts to which they are assigned. They shall be assigned to a horticultural inspection district and may be transferred from one district to another. Their salaries and necessary traveling expenses, as shown by vouchers verified by them and countersigned by the director, shall be paid by warrants drawn upon the state treasurer, horticultural inspection district funds, the horticultural inspection trust fund, or from county appropriations: *Provided*, That, not less than twenty-five percent of their total salary shall be paid by warrants drawn upon the state treasurer. [1961 c 11 § 15.04.040. Prior: 1957 c 163 § 3; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

**15.04.050 Director's determination of facts final—Appeals.** The director shall determine all questions of fact under the laws relating to horticulture, which determinations shall be final. Questions of law may be appealed to a superior court. [1961 c 11 § 15.04.050. Prior: 1921 c 141 § 14; RRS § 2873.]

**15.04.060 Local inspectors—Petition by owners for assistance in combating infection.** Whenever twenty-five or more resident freeholders of any county, each of whom is the owner of an orchard, berry farm, cultivated cranberry marsh or nursery, present a petition to the board of commissioners stating that certain horticultural premises in the county are infected and the petitioners desire the help of inspectors in combating the infection, the board shall by resolution request the director to appoint and assign to that county such a number of local horticultural inspectors for such time as the petition specifies. [1961 c 11 § 15.04.060. Prior: 1957 c 163 § 4; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

**15.04.070 Local inspectors—Qualifications—Compensation—Control of.** Said local inspectors shall satisfy the director, by examination, that their knowledge and experience qualifies them to successfully perform horticultural inspection work. Their salaries, as fixed by the board, and actual and necessary traveling expenses shall be paid from the county current expense fund on vouchers verified by them, approved by the director and ordered paid by the board. All local inspectors are under the direction and control of the director and supervisor. [1961 c 11 § 15.04.070. Prior: 1957 c 163 § 5; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

**15.04.080 Inspections in absence of local inspector.** If any county fails to appoint a county horticultural inspector, or he is not available, the nearest available inspector may perform the services, and his compensation and necessary expenses shall be charged against said county.

If any inspector is dismissed from the service, or is assigned to another county or other duties, any qualified inspector or officer of the department may continue or complete any work initiated by him. [1961 c 11 § 15.04.080. Prior: 1957 c 163 § 6; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

**15.04.090 Lease of unnecessary lands to nonprofit groups—Funds.** The director of agriculture may, at his discretion, for a period of not to exceed ten years, lease state lands which are now or may hereafter be, under his direction and control, the retention of which he deems unnecessary for present state purposes or needs, to any nonprofit group or organization having educational, agricultural or youth development purposes. Such leases shall be upon such terms as the director deems beneficial to the state. All rental funds received by the director under the provisions of this section shall be deposited in the "fair fund" provided in RCW 67.16.100. [1961 c 11 § 15.04.090. Prior: 1953 c 119 § 1.]

**15.04.100 Horticulture inspection trust fund.** The director shall establish a horticulture inspection trust fund to be derived from horticulture inspection district funds. The director shall adjust district payments so that the balance in the trust fund shall not exceed seventy-five thousand dollars. The director is authorized to make payments from the trust fund to:

(1) Pay fees and expenses provided in the inspection agreement between the state department of agriculture and the agricultural marketing service of the United States department of agriculture;

(2) Pay portions of salaries of inspectors—at-large as provided under RCW 15.04.040;

(3) Assist horticulture inspection districts in temporary financial distress as result of less than normal production of horticultural commodities: *Provided*, That districts receiving such assistance shall make repayment to the trust fund as district funds shall permit;

(4) Pay necessary administrative expenses for the division of plant industry attributable to the supervision of the horticulture inspection services. [1969 ex.s. c 76 § 1; 1961 c 11 § 15.04.100. Prior: 1959 c 152 § 1; 1957 c 163 § 1.]

**15.04.110 Control of predatory birds.** The director of the state department of agriculture may control birds which he determines to be injurious to agriculture, and for this purpose enter into written agreements with the federal and state governments, political subdivisions and agencies of such governments, political subdivisions and agencies of this state including counties, municipal corporations and associations and individuals, when

such cooperation will implement the control of predatory birds injurious to agriculture. [1961 c 247 § 1.]

**15.04.120 Control of predatory birds—Expenditures and contracts.** For the purpose of carrying out the provisions of RCW 15.04.110 the director may make expenditures and contract for personal services, control materials and equipment as required to carry out such predatory bird control functions. [1961 c 247 § 2.]

**15.04.130 Green peas—Study on quality standards for determining grades.** Because of the importance of the green pea industry to the state's economy, the department of agriculture is authorized and directed to make or cause to be made a study of (1) the quality standards involved in the establishment of grades of green peas to be used for canning and freezing upon which producers are paid, and (2) the existing system of mechanical determination of such grades, including the development of improved instruments of greater accuracy and uniformity, together with methods for standardizing all such instruments used for grading. [1967 c 195 § 1.]

**15.04.140 Green peas—Study on quality standards for determining grades—Cooperation with other entities.** The department of agriculture is authorized to seek the cooperation of the United States department of agriculture and the Idaho and Oregon departments of agriculture and any other governmental or state agencies including any private agencies or groups associated with the production and processing of green peas. [1967 c 195 § 2.]

## Chapter 15.08

### HORTICULTURAL PESTS AND DISEASES

#### Sections

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*Pest control compact: Chapter 17.34 RCW.*

**15.08.010 Definitions.** As used in this chapter:

"Supervisor" means an assistant director known as the supervisor of horticulture;

"Horticultural premises" includes orchards, vineyards, nurseries, berry farms, vegetable farms, cultivated cranberry marshes, packing houses, dryhouses, warehouses, depots, docks, cars, vessels and other places where nursery stock, fruits, vegetables and other horticultural products are grown, stored, packed, shipped, held for shipment or delivery, sold or otherwise disposed of;

"Nursery stock" includes fruit trees, vines and bushes; fruit tree stock; rose bushes and stock; forest, ornamental and shade trees and shrubs (deciduous and evergreen); fruit bearing plants and parts thereof; plant products for planting or propagation (except vegetable plants);

"Pests and diseases" includes the following pests injurious to and diseases of nursery stock, fruit and vegetables:

(1) Bacterial diseases—fire blight of apple, pear and quince, crown gall or root gall, and hairy root;

(2) fungus diseases—black spot canker, pear scab, apple scab, apple powdery mildew, peach leaf curl, peach mildew, brown rot of peach, cherry and prune, chestnut blight, potato wart, powdery scab of potato and peach twig blight, blue stem of black raspberry, black stem rust of barley and wheat, eastern filbert blight, European apple canker;

(3) insect pests—chewing insects, such as bud moth, peach twig borer caterpillars, pear slug, flat-headed borer, round-headed borer, imported cabbage worm, potato tuber moth, potato nematode or eel worm, potato leaf mold, Mediterranean fruit fly, lesser apple worm, tussock moth, gypsy moth, brown tail moth, codling moth, fruit tree leaf roller, cherry maggot, cherry fruit saw-fly, satin moth, currant maggot, Colorado potato beetle, strawberry weevil, European earwig, Japanese beetle, pear thrips, and larvae of any thereof;

(4) sucking insects—San Jose scale, scurfy scale, oyster-shell bark louse, aphids, pear leaf blistermites and red spider;

(5) and such other bacterial and fungus diseases and insect pests identified as such by science and described as being injurious to horticulture in circulars issued by the director;

"Nuisance" means any plants, produce or property found in any commercial area upon which is found any pest or disease recognized in this chapter that is a source of infestation of other properties;

"Nuisance per se" means any nuisance, as above defined, which will or is likely to cause damage or infection to other property;

"Commercial area" means a district where any horticultural product is being produced to the extent that a

producer is dependent thereon, in whole or in part, for his livelihood;

"Infect" and its derivatives "infected," "infecting," and "infection," means affected by or infested with pests or diseases as above defined;

"Disinfect" and its derivatives means the control, cure, or eradication of such pests or diseases by cutting or destroying infected parts or the application of fungicides, insecticides, or other effective solutions or emulsions;

"Agent" means any person acting as agent, salesman, solicitor, or representative of a licensed nurseryman or licensed dealer in nursery stock, who sells from a catalog or samples and makes no deliveries at the time of solicitation. [1961 c 11 § 15.08.010. Prior: (i) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part. (ii) 1941 c 20 § 2; Rem. Supp. 1941 § 2849-1b. (iii) 1941 c 20 § 3; Rem. Supp. 1941 § 2849-1c. (iv) 1941 c 20 § 4; Rem. Supp. 1941 § 2849-1d. (v) 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

**15.08.020 Methods of prevention, control and disinfection.** The following methods shall be used for the prevention, control or disinfection of pests and diseases:

(1) Bacterial diseases, removal and destruction of infected plant or part thereof, care being used to disinfect removal tools to prevent infection therefrom;

(2) fungus diseases, spraying with effective fungicide;

(3) chewing or sucking insect pests, spraying with effective insecticide;

(4) fungus insect pests, spraying with other effective solutions or emulsions described in circulars issued by the director. [1961 c 11 § 15.08.020. Prior: 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

**15.08.025 Disinfection of fruit trees—Procedures to be followed.** The method for disinfecting fruit trees required to be disinfected under the provisions of this chapter, shall be as prescribed in, and shall include the mandatory use of all procedures and formulations provided for in the "extension bulletin 419" published by the extension service, institute of agricultural sciences, Washington State University, as published and in effect on June 10, 1965, for the proper prevention, control and eradication of pests and diseases of fruit trees: *Provided*, That the department of agriculture may adopt any subsequent change or amendment to said "extension bulletin 419".

Whenever specific recommendations for disinfecting fruit trees are not set forth in the said "extension bulletin 419", then the generally accepted horticultural practices for the prevention, control and eradication of any pests and diseases in the producing area shall be used.

The burden of proving that the proper procedures as set forth in this section have been followed, shall be upon the person ordered to disinfect fruit trees.

The disinfection of fruit trees as in this section set forth shall in no way limit the authority of the inspection board to determine that such fruit trees constitute a

nuisance and thus shall be subject to removal as provided for in this chapter. [1965 c 27 § 2.]

**Purpose—**1965 c 27: "The production of tree fruits in the state of Washington is a major agricultural industry promoting the general economic welfare of the state and beneficial to the health of the public. The proper maintenance of fruit tree orchards to insure the continued and increased benefits to the health and welfare of the state makes it necessary to prevent, eradicate and control any pests or diseases which are or may be injurious to such fruit trees and the produce therefrom. Such prevention, eradication and control of pests and diseases which are or may be injurious to fruit trees and their crops may require chemical or biological control or removal of host trees which may be hosts and breeding places for such diseases and pests. The provisions of this act are adopted under the police power of the state for the purpose of protecting its health and general welfare, presently and in the future." [1965 c 27 § 1.] This applies to RCW 15.08.025.

**15.08.030 Duty to disinfect, destroy—Disposal of cuttings.** It is the duty of every owner, shipper, consignee, or other person in charge of fruits, vegetables, or nursery stock, and the owner, lessee, or occupant of horticultural premises, to use sufficient methods of prevention to keep said properties free from infection by pests or disease. In event any of said properties become infected it is the duty of said persons to use effective methods to control or destroy the infection by disinfection as in this chapter defined. All fruits, vegetables and nursery stock which cannot be successfully disinfected shall be promptly destroyed.

In counties where black stem rust infection occurs every owner or person in charge of premises on which barberry bushes of the rust-producing varieties are growing shall forthwith destroy such bushes.

Within forty-eight hours after removal of any cuttings or prunings from bacterially infected trees or plants infected with fruit tree leaf roller egg clusters the person removing same shall disinfect or destroy them by burning or scorching. [1961 c 11 § 15.08.030. Prior: (i) 1927 c 311 § 3; 1923 c 37 § 2; 1915 c 166 § 4; RRS § 2842. (ii) 1921 c 141 § 8; 1915 c 166 § 18; RRS § 2856.]

**15.08.040 Authority to enter premises—Interference unlawful.** The director, supervisor and horticultural inspectors are authorized to at any time enter horticultural premises and any structure where fruit, vegetables, nursery stock, or horticultural products are grown or situated for any purpose, to inspect the same for infection.

No person shall hinder or interfere with any such officer in entering or inspecting or performing any duty imposed upon him. [1961 c 11 § 15.08.040. Prior: 1915 c 166 § 9; RRS § 2847.]

**15.08.050 Condemnation of infected property—Disposal of, unlawful.** If the premises or property inspected is found to be infected the inspecting officer shall condemn the same and serve upon the owner or person in charge thereof a written notice of the condemnation, describing the premises or property with reasonable certainty, and ordering the infected portion to be disinfected, or to be destroyed if incapable of disinfection, within a time and in a manner stated therein, and giving notice that if the order is not complied with in the time stated, the officer will disinfect or destroy

the property and charge the expense thereof to the owner or against the premises.

No person shall ship, sell, or otherwise dispose of or part with possession of, or transport, any such condemned property until all requirements of said notice and order are complied with and written permit of the inspector so to do is issued. [1961 c 11 § 15.08.050. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

**15.08.060 Condemnation of infected property—Notice to owner—Division into classes.** Said notice of condemnation shall also grant permission to the owner or person in charge of infected fruit, vegetables, or nursery stock to divide the same into classes:

(1) The portion not infected;

(2) the infected portion which is capable of successful disinfection; and

(3) the infected portion which is incapable of successful disinfection and must be destroyed.

Said notice shall require the owner or person to disinfect class (2) and destroy class (3) within the time stated. [1961 c 11 § 15.08.060. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

**15.08.070 Condemnation of infected property—Use of condemned fruit, vegetables—Permit.** In the case of fruit or vegetables which cannot be successfully disinfected the inspector may grant to the owner or person in charge thereof a written permit to use the condemned products for stock feed, or manufacture the same into byproducts, or ship them to a byproduct factory; and it is unlawful for the person receiving such permit to sell or dispose of such products without first having the same manufactured into a byproduct or shipped to a byproduct factory, or to divert any such shipment when made, or for the consignee of such shipment to sell or dispose of the same until it is manufactured into a byproduct. [1961 c 11 § 15.08.070. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

**15.08.080 Condemnation of infected property—Service of notice—Personal, constructive, substituted.** Personal service of said notice shall be made upon the person in possession or in charge of said premises or property if possible. If such person is not the owner, or personal service cannot be made on such person, then a copy of the notice shall be mailed or telegraphed to the owner at his home or post office address if known or can with reasonable diligence be ascertained. If personal service cannot be made upon any person in possession or charge of the premises or property and the name and address of the owner thereof are not known or cannot be so ascertained, then the notice shall be served by posting the same in some conspicuous place on the premises where the property to be disinfected or destroyed is situated, which service by posting shall be



construed to be constructive personal service upon such owner. If the name and address of the owner are not known or cannot be so ascertained, service upon the person in possession or charge of the premises or property shall constitute substituted personal service upon the owner, in the absence of fraud or gross neglect. [1961 c 11 § 15.08.080. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

**15.08.090 Condemnation of infected property—Duty to comply—Inspector's duty on failure—Lien for costs.** Except as hereinabove provided, upon service of said notice the owner or person in possession or charge of the premises or property shall comply with its terms within the time specified. In case of their failure so to do, the inspector may enter the premises and perform or cause to be performed the services required in the notice. He shall keep an accurate account of the expense of performing said services, which shall become a lien on the premises or property which may be foreclosed in the manner herein provided. The lien on personal property shall have preference over all other liens.

If the inspector has not disinfected or destroyed the property it may be declared a nuisance as herein provided and treated as such. [1961 c 11 § 15.08.090. Prior: (i) 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part. (ii) 1943 c 150 § 5; 1935 c 168 § 4; 1931 c 27 § 2; 1927 c 311 § 4; 1915 c 166 § 11; Rem. Supp. 1943 § 2849.]

**15.08.100 Foreclosure of lien—Sale—Notice of impounding—Contents.** The officer disinfecting personal property may enforce the lien thereon provided for in RCW 15.08.090 by impounding and selling the property. He shall give notice of the impounding and proposed sale by posting a written notice in a conspicuous place upon the premises where the property is impounded and serve said notice upon the owner or person in charge of the property in the manner provided for service of notice to disinfect in RCW 15.08.080. Said notice shall state that the property, describing it with reasonable certainty, has been impounded, where it is situated, the amount of costs and expenses charged against it, and that unless same are paid within a specified time the property will be sold to satisfy said charges, accrued transportation and storage charges, if any, and costs of sale. Said specified time shall not be less than ten days after giving of the notice, except that immediate sale may be made of perishable fruits or vegetables. [1961 c 11 § 15.08.100. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

**15.08.110 Sale proceeds—Deficiency—Action to recover.** Such sales may be either at public auction or private sale, whichever, in the sound discretion of the officer, will be to the best interests of the state and owner of the property. The proceeds thereof shall be applied to payment of: First, costs of sale; second, expenses of disinfection; third, accrued transportation and

storage charges. The balance, if any, shall be paid to the owner.

Should such proceeds be insufficient to pay the costs of sale and expenses of disinfection, the deficiency may be recovered from the owner or person in charge in an action brought in the name of the state on the relation of the director by the prosecuting attorney of the county when directed to do so by the attorney general. [1961 c 11 § 15.08.110. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

**15.08.120 Record of proceedings—Verified copy as evidence.** The inspector shall make and sign a record of the proceedings, stating the name of the owner or reputed owner of the property, if known; location of the property, date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; the cost thereof in detail; date and manner of giving notice of impounding and sale; date, place, and manner of sale; name of the purchaser; and amount of the proceeds and disposition thereof.

Upon demand of the owner or person in charge of the property, the inspector shall furnish him with a verified copy of the record, and tender him the balance of the proceeds. If no demand is made within thirty days of the sale, or if the tender is refused, the inspector shall file a verified copy of the record with and remit any balance of the proceeds to the director, and if it is not claimed by the owner within six months, it shall be deposited in the state treasury.

The record or a verified copy thereof shall be admissible in evidence as prima facie evidence of the truth of its contents. [1961 c 11 § 15.08.120. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

**15.08.130 Record of premises disinfected—Costs—Lien.** The inspector disinfecting any horticultural premises shall make and sign a detailed record of the proceedings, stating the legal description of the premises; give the name of the owner or reputed owner; the date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; and the cost thereof in detail. If the cost is not paid within five days from the completion of the disinfecting, the inspector shall file with the auditor of the county in which the premises are situated two verified copies of the above record, and a claim of lien against the premises for the amount of the costs and therein refer to the record, which the auditor shall record as other lien claims. The auditor shall charge the same fees as are charged for filing and recording other liens. [1961 c 11 § 15.08.130. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

**15.08.140 Hearing on costs—Notice—Service.** The county auditor shall forthwith issue warrants in payment of the labor employed in the work, and thereupon the county shall be subrogated to all rights of the laborers so paid. He shall fix the day for hearing on the record before the county commissioners, which shall be

not less than twenty days from the date of filing. He shall prepare a notice directed to the owner or reputed owner of the premises of the filing of the record and claim and the hearing thereon, the time and place of the hearing and the amount of the claim. The sheriff shall serve the notice in the manner provided for service of the notice to disinfect, and file with the auditor before the hearing, his return of service and the amount of his fees, which shall be the same as for service of summons in civil proceedings. [1961 c 11 § 15.08.140. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

**15.08.150 Payment and release—Order on amount—Priority of lien.** If before or at the hearing the amount of the claim and the auditor's and sheriff's fees are paid to the county treasurer, he shall deliver to the auditor a duplicate receipt of the payment and the auditor shall cancel the lien and notify the county commissioners thereof. The treasurer shall pay the funds to the persons entitled thereto as appears from the records in the auditor's office.

If payment is not made, the auditor shall present to the board of county commissioners a verified copy of the record and claim, which shall be accepted in any proceeding as prima facie evidence of the truth of the contents thereof. The board shall receive and consider the record and claim and all sworn testimony offered, and shall enter an order fixing the amount of the claim and costs, and direct the amount paid from the current expense fund, and the auditor shall draw warrants therefor. The auditor shall record the order in his office as other lien claims and it shall be a lien against the premises in favor of the county, and shall bear interest at six percent per year from the date of the order. [1961 c 11 § 15.08.150. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

**15.08.160 Payment date—Cancellation of lien.** The lien and interest may be paid on or before the first Monday in October following the entry of the order, upon presenting to the treasurer, a statement from the auditor showing the amount due. Upon payment the treasurer shall stamp the statement and file it in his records, and shall issue a receipt to the person making the payment, showing payment and shall deliver a duplicate to the auditor, who shall then cancel the lien. [1961 c 11 § 15.08.160. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

**15.08.170 Failure to pay—Conversion into taxes—Use.** If the lien and interest are not paid on or before such first Monday in October the commissioners, when levying taxes for the ensuing year, shall also levy on the premises covered by the lien, a tax for the amount of the lien and interest, together with a penalty of six percent, which tax shall be collected as other taxes for current expenses. The auditor shall then cancel the lien and note thereon that the amount thereof has been charged against the premises as taxes.

The tax shall be credited to the current expense fund and used to defray the expense of horticultural inspection and disinfection in the county, whether or not such expenditure has been included in the estimates made in the current county budget. [1961 c 11 § 15.08.170. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

**15.08.180 Inspection board—Creation—Duties—Powers.** If a horticultural inspector finds premises or property infested, he shall make a written report thereof to the inspector-at-large in his district stating the disease or infestation found, the estimated extent thereof, and whether in his opinion it is or will become a nuisance. Upon receipt of the report the inspector-at-large shall appoint a person residing within three miles of the said premises or property and who is a grower of horticultural products which could be infected from said premises or property, and who, with the inspector-at-large or someone delegated by him from his department, shall appoint a third person likewise a grower of agricultural products which could be so infected. Said three persons shall constitute an inspection board whose duty shall be to forthwith examine the infested premises or property so as to determine whether same or any part thereof is infested with any pest or disease named in RCW 15.08.010.

The board members shall have the same power of entry and inspection as the director, supervisor or horticultural inspector and shall be compensated at the rate of four dollars per day to be paid from the county current expense budget for horticulture. [1961 c 11 § 15.08.180. Prior: (i) 1941 c 20 § 5; 1915 c 166 § 6; Rem. Supp. 1941 § 2849-1e. (ii) 1941 c 20 § 7, part; Rem. Supp. 1941 § 2849-1g, part.]

**15.08.190 Report of inspection—Nuisance abatement.** Said board shall make a written report to the inspector-at-large of its findings, signed under oath by a majority of its members and stating:

(1) Whether said premises or a part thereof are infested,

(2) if infested, the nature and extent of infestation, and

(3) whether the infestation constitutes a nuisance. If the report shows the premises infested and constituting a nuisance, it and the findings of the inspector, shall be transmitted forthwith to the prosecuting attorney of the county. Within five days the prosecuting attorney shall file in the superior court a petition, signed and verified by him, describing the premises or property, giving the names of the owners, encumbrancers and other persons interested therein, as ascertained from the county records, containing a recital of the proceedings taken under RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180, and praying for an order declaring the premises or property to be a nuisance. Said report of the inspection board shall be attached to the petition as an exhibit and made a part thereof. [1961 c 11 § 15.08.190. Prior: 1941 c 20 §§ 6, 7, part, 8; Rem. Supp. §§ 2849-1f, 2849-1g, part, 2849-1h.]

**15.08.200 Notice of hearing—Service—Adjournments.** A notice containing a description of the premises, stating the objects and purposes of the petition and the time and place of presentation of the petition to the court, shall be served upon every person named as interested in the premises at least five days prior to the time of presentation. Service of the notice shall be as nearly as possible in the manner provided by law for service of summons in a civil action, except that if service is had by publication the period of publication shall be two weekly publications in a newspaper published or of general circulation in the county, and the service shall be deemed completed on the expiration of fifteen days after the date of the first publication.

Proof of service may be made by affidavit of the person serving or publishing the notice and shall be filed with the clerk of the court on or before the time of presentation of the petition.

On application of any party or its own motion the court may adjourn the hearing from time to time, and may order new or further notice to be given any person whose interest may be affected. [1961 c 11 § 15.08.200. Prior: (i) 1941 c 20 § 9; 1937 c 71 § 2; Rem. Supp. § 2849-2. (ii) 1937 c 71 § 3; RRS § 2849-3.]

**15.08.210 Order of abatement.** At the hearing there must be competent proof that all parties interested in the premises or property have been duly served with said notice, and that the procedure prescribed in RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180 has been duly followed. The report of the inspection board shall be prima facie evidence that the premises are infested and constitute a nuisance. If there is no showing that said board acted in a capricious, arbitrary or unfair manner, the court shall accept the recommendation of said board and forthwith decree the plants, produce or property on the premises to constitute a nuisance and order the inspector-at-large of the district and the county commissioners to destroy the same, or abate the nuisance in such other manner as the court may direct.

The costs of destruction or abatement, and of the proceedings shall be taxed against the defendants therein. [1961 c 11 § 15.08.210. Prior: (i) 1941 c 20 § 10; Rem. Supp. 1941 § 2849-2a. (ii) 1937 c 71 § 4; RRS § 2849-4.]

**15.08.220 Appeals—Bond for damages.** An appeal may be taken from the decree by filing notice thereof not later than ten days after issuance of the decree. The appellant shall be required to file an appeal bond of not less than one thousand dollars and sufficient in amount to cover possible damages to neighboring properties due to delay in carrying out the decree. [1961 c 11 § 15.08.220. Prior: 1941 c 20 §§ 11, 12; Rem. Supp. 1941 §§ 2849-2b, 2849-2c.]

**15.08.230 Disinfection of public properties.** The director and the governing body of counties, cities, towns and irrigation and school districts shall disinfect or destroy all infected trees or shrubs growing upon public property within their respective jurisdictions, and they

may expend funds of their county, city, town, or district in carrying out the provisions of this section. The director may compel compliance herewith by an action in the name of the state upon the relation of the director. [1961 c 11 § 15.08.230. Prior: 1915 c 166 § 19; RRS § 2857.]

**15.08.240 Dumping infected products, containers, prohibited.** It shall be unlawful for a property owner or lessee to permit the piling or dumping, or for a person to pile or dump, any infected product on any property or to pile or dump infected containers where the dumping of the infected products or containers might constitute a source of infestation to horticultural products. [1961 c 11 § 15.08.240. Prior: 1943 c 150 § 6; 1941 c 20 § 14; Rem. Supp. 1943 § 2849-2e.]

**15.08.250 Host-free districts—Director's duties.** Whenever the director determines that a particular pest cannot be eradicated or effectively controlled by ordinary means, or that it is impractical to eradicate or control it without the destruction in whole or in part of uninfected host plants, he may issue a proclamation setting out the host-free period or host-free district, or both, describing the host plant and the district wherein planting, growing, cultivating, or maintenance in any manner of any plants or products capable of continuing the particular pests is prohibited during a specified period of time and until the menace therefrom no longer exists. [1961 c 11 § 15.08.250. Prior: 1941 c 20 § 13; Rem. Supp. 1941 § 2849-2d.]

**15.08.260 Horticultural tax.** At the time of making the regular annual tax levy the board of county commissioners of each county shall include a tax, to be known as the "horticultural tax," upon the taxable property of the county in an amount sufficient to meet the expense of inspecting and disinfecting nursery stock, fruits, vegetables, horticultural or agricultural products, and horticultural premises under the provisions of this title. Said tax shall be levied and collected in the same manner as are general taxes and when collected shall be placed in the county current expense fund. [1961 c 11 § 15.08.260. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

**15.08.270 Basis for estimating the tax.** In estimating the amount to be levied for said horticultural tax the board shall take into consideration the expense of such inspection and disinfection for the ensuing year, and the amount which will be collected under the provisions of this chapter on properties disinfected. [1961 c 11 § 15.08.270. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

## Chapter 15.09

### HORTICULTURAL PEST AND DISEASE BOARD

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**15.09.010 Purpose.** The purpose of this chapter is to enable counties to more effectively control and prevent the spread of horticultural pests and diseases. [1969 c 113 § 1.]

**15.09.020 Creation of board.** Either upon receiving a petition filed by twenty-five landowners within the county or on its own motion, the board of county commissioners in order to achieve the purposes of this chapter may, following a hearing, create a horticultural pest and disease board. [1969 c 113 § 2.]

**15.09.030 Members—Appointment—Terms.** Each horticultural pest and disease board shall be comprised of five voting members, four of whom shall be appointed by the board of county commissioners and one of whom shall be the inspector at large for the horticultural district in which the county is located. In addition, the chief county extension agent, or a county extension agent appointed by the chief agent, shall be a nonvoting member of the board.

Of the four members appointed by the board of county commissioners, one of such members shall have at least a practical knowledge of horticultural pests and diseases, and the other members shall be residents of the county, shall own land within the county and shall be engaged in the primary and commercial production of a horticultural product or products. Such appointed members shall serve a term of two years and shall serve without salary. [1969 c 113 § 3.]

**15.09.040 Meeting—Quorum—Officers.** Within thirty days after the appointed seats on the horticultural pest and disease board have been filled, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chairman and such other officers as may be necessary. [1969 c 113 § 4.]

**15.09.050 Powers and duties.** Each horticultural pest and disease board shall have the following powers and duties:

- (1) To receive complaints concerning the infection of horticultural pests and diseases on any parcel of land within the county;
- (2) To inspect or cause to be inspected any parcel of land within the county for the purpose of ascertaining

the presence of horticultural pests and diseases as provided by RCW 15.09.070;

(3) To order any landowner to control and prevent the spread of horticultural pests and diseases from his property, as provided by RCW 15.09.080;

(4) To control and prevent the spread of horticultural pests and diseases on any property within the county as provided by RCW 15.09.080, and to charge the owner for the expense of such work in accordance with RCW 15.09.080 and 15.09.090;

(5) To employ such persons and purchase such goods and machinery as the board of county commissioners may provide;

(6) To adopt, following a hearing, such rules and regulations as may be necessary for the administration of this chapter. [1969 c 113 § 5.]

**15.09.060 Owner's duty to control pests and diseases.** Each owner of land containing any plant or plants shall perform or cause to be performed such acts as may be necessary to control and to prevent the spread of horticultural pests and diseases, as such pests and diseases are defined under RCW 15.08.010, as now or hereafter amended, or as such pests and diseases are defined by the director of the department of agriculture in accordance with the purpose of this chapter and with the provisions of the Administrative Procedure Act, chapter 34.04 RCW. The word "owner" as used in this section shall mean the possessor or possessors of any form of legal or equitable title to land and entitlement to possession. For purposes of liability under this chapter, the owners of land shall be jointly and severally liable. [1969 c 113 § 6.]

**15.09.070 Right of entry—Search warrant.** Any authorized agent or employee of the county horticultural pest and disease board may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens, general inspection, and the performance of such acts as are necessary for controlling and preventing the spreading of horticultural pests and diseases. Such entry may be without the consent of the owner, and no action for trespass or damages shall lie so long as such entry and any activities connected therewith are undertaken and prosecuted with reasonable care.

Should any such employee or authorized agent of the county horticultural pest and disease board be denied access to such property where such access was sought to carry out the purpose and provisions of this chapter, the said board may apply to any court of competent jurisdiction for a search warrant authorizing access to such property for said purpose. The court may upon such application issue the search warrant for the purpose requested. [1969 c 113 § 7.]

**15.09.080 Notice and order to control pests and diseases—Authority of board to perform control measures—Expenses charged to owner.** (1) Whenever the horticultural pest and disease control board finds that an owner of land has failed to control and prevent the

spread of horticultural pests and diseases on his land, as is his duty under RCW 15.09.060, it shall provide such person with written notice, which notice shall identify the pests and diseases found to be present and shall order prompt control or disinfection action to be taken within a specified and reasonable time period.

(2) If the person to whom the notice is directed fails to take action in accordance with this notice, then the board shall perform or cause to be performed such measures as are necessary to control and prevent the spread of the pests and diseases on such property and the expense of this work shall be charged to such person: *Provided*, That the board shall have no power to order the destruction of any plant. [1969 c 113 § 8.]

**15.09.090 Hearing on liability of owner for costs or charges—Review.** Any person upon request and pursuant to the rules and regulations of the horticultural pest and disease board shall be entitled to a hearing before the board on any charge or cost for which such person is alleged to be liable under subsection (2) of RCW 15.09.080. Any determination or final action by the board shall be subject to judicial review by a proceeding in the superior court of the county where the property is situated and to any damages suffered on account of disinfection work wrongfully undertaken, but no stay or injunction shall lie to delay any such disinfection work subsequent to notice given pursuant to RCW 15.09.080. [1969 c 113 § 9.]

**15.09.100 Payment of expenses and costs—Penalty—Collection.** Any amount charged to the owner of land in accordance with the provisions of RCW 15.09.080 and 15.09.090 shall be paid by such owner within sixty days of the date in which he was billed for such amount. If payment is not made within such sixty day period, the amount of such charge, together with a ten percent penalty surcharge, shall, for purposes of collection, become a tax lien under RCW 84.60.010, as now or hereafter amended, and shall be promptly collected as such by the county treasurer: *Provided*, That where good cause is shown the board may extend for an additional two months the time period during which payment shall be made. [1969 c 113 § 10.]

**15.09.110 Refund of charges paid.** In regard to any charge made pursuant to RCW 15.09.080, if either the horticultural pest and disease board or the superior court on judicial review disallows such charge, then any amount paid on such charge, together with any interest or penalty, shall be promptly refunded by the county from the county's current expense fund or from any other county funds available. In addition, the county shall pay six percent simple annual interest on such amount refunded. [1969 c 113 § 11.]

**15.09.120 Disposition of moneys collected.** Any moneys collected under this chapter shall be placed in the county current expense fund together with any taxes collected pursuant to the provisions of RCW 15.08.260, as now or hereafter amended. [1969 c 113 § 12.]

**15.09.130 Operating moneys.** Sufficient operating moneys for the horticultural pest and disease board shall be provided for pursuant to the provisions of RCW 15.08.260 and 15.08.270, as now or hereafter amended. [1969 c 113 § 13.]

**15.09.140 Abolishment of board.** Upon receipt of a petition signed by twenty-five landowners within the county or on its own motion, the board of county commissioners may abolish the pest and disease board following a hearing and a finding that the purposes of this chapter would not be sufficiently served by the continued existence of such board. [1969 c 113 § 14.]

**15.09.900 Chapter cumulative.** The effects of the provisions of this chapter on the provisions of chapter 15.08 RCW shall be cumulative. [1969 c 113 § 15.]

**Chapter 15.13  
HORTICULTURAL PLANTS AND FACILITIES—  
INSPECTION AND LICENSING**

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**Prior law:** 1961 c 11 §§ 15.12.010 through 15.12.110; 1961 c 221 §§ 1 through 23 (codified as RCW 15.13.010 through 15.13.210, 15.13.900, and 15.13.910).

*Imported seeds, nursery stock, fruit, vegetables, markings on packaging:* RCW 17.24.060.

*Liens for improving property with nursery stock: Chapter 60.20 RCW.*

**15.13.250 Definitions.** For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(4) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, viticultural, and olericultural plant, for planting, propagation or ornamentation growing or otherwise, including cut plant material.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants and/or cut plant material are grown, stored, handled or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants and/or cut plant material.

(6) "Plant pests" means, but is not limited to any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants, weeds, or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.

(7) "Inspection and/or certification" means, but is not limited to, the inspection of any horticultural plants and/or cut plant material at any time prior to, during, or subsequent to harvest, or sale, by the director, and the issuance by him of a written certificate stating the grades, classifications, and if such horticultural plants and/or cut plant material are free of plant pests and in compliance with all the provisions of this chapter and rules adopted hereunder.

(8) "Nursery dealer" means any person who sells, holds for sale, or offers for sale, or plants, grows, receives, or handles horticultural plants and/or cut plant material, including turf for sale or for planting, including lawns, for another person.

(9) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product. [1971 ex.s. c 33 § 1.]

**15.13.260 Enforcement—Rules and regulations—Scope.** The director shall enforce the provisions of this chapter and he may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing grades and/or classifications for any horticultural plant and/or cut plant material and standards for such grades and/or classifications.

(2) The director may adopt rules for the inspection and/or certification of any horticultural plant and/or cut plant material as to variety, quality, size and freedom from plant pests.

(3) The director shall adopt rules establishing fees for inspection of horticultural plants and/or cut plant material and methods of collection thereof.

(4) The director shall when adopting rules or regulations under the provisions of this chapter, hold a public hearing and satisfy all the requirements of chapter 34.04 RCW (administrative procedure act) as enacted or hereafter amended, concerning the adoption of rules and regulations. [1971 ex.s. c 33 § 2.]

**15.13.270 Licensing exemptions—Permits for clubs, nonprofit associations, fee.** The provisions of this chapter relating to licensing shall not apply to persons making casual or isolated sales nor to any garden club or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants as defined in RCW 15.13.250 and which are grown by or donated to its members: *Provided*, That such club or association shall apply to the director for a permit to conduct such sale. A two dollar fee shall be assessed for such permit.

All horticultural plants sold under such a permit issued by the director shall be subject to all the other provisions of this chapter except licensing as set forth herein. [1971 ex.s. c 33 § 3.]

**15.13.280 Nursery dealer licenses—Application—Fee—Expiration—Posting.** No person shall act as a nursery dealer without a license for each place of business where horticultural plants are sold. Any person applying for such a license shall file an application with the director on or before July of each year. Such application shall be accompanied by a license fee of twenty-five dollars. Such license shall expire on June 30th following issuance unless it has been revoked or suspended prior thereto by the director for cause. Each such license shall be posted in a conspicuous place open to the public in the location for which it was issued. [1971 ex.s. c 33 § 4.]

**15.13.290 Nursery dealer licenses—Additional charge for late renewal, when.** If any application for renewal of nursery dealer license is not filed prior to July in any year, an additional charge of fifty percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional assessment shall not apply if the applicant furnishes an affidavit certifying that he has not acted as a nursery dealer subsequent to the expiration of his prior license. [1971 ex.s. c 33 § 5.]

**15.13.300 Nursery dealer licenses—Application—Contents.** Application for a license shall be on a form prescribed by the director and shall include:

(1) The full name of the person applying for such license and if the applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or the names of the officers of the association or corporation shall be given in the application.

(2) The principal business address of the applicant in the state and elsewhere.

(3) The address for the location or locations for which the licenses are being applied.

(4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant.

(5) Any other necessary information prescribed by the director. [1971 ex.s. c 33 § 6.]

**15.13.310 Assessment on gross sale price of wholesale market value of fruit trees, seedlings and rootstock—Method for determining—Due date—Gross sale period.** (1) There is hereby levied an annual assessment of one percent on the gross sale price of the wholesale market value for all fruit trees, fruit tree seedlings, and fruit tree rootstock sold within the state or shipped from the state of Washington by any licensed nursery dealer during any license period, as set forth in this chapter: *Provided*, That the director may subsequent to a hearing, on or after this chapter has been in effect for a period of two years, reduce such assessment to conform with the costs necessary to carry out the fruit tree certification and nursery improvement programs specified in RCW 15.13.470.

Such wholesale market price may be determined by the wholesale catalogue price of the seller of such fruit trees, fruit tree seedlings, or fruit tree rootstock or of the shipper moving such fruit trees, fruit tree seedlings, or fruit tree rootstock out of the state. If the seller or shipper do not have a catalogue, then such wholesale market price may be based on the actual selling price or an average wholesale market price. The director in determining such average wholesale market price may use catalogues of various businesses licensed under the provisions of this chapter or any other reasonable method.

(2) Such assessment shall be due and payable at the time the nursery dealer applies for a license or should have applied for a license as required in the provisions of this chapter.

(3) The gross sale period shall be from July 1 to June 30 of the previous license period. [1971 ex.s. c 33 § 7.]

**15.13.320 Advisory committee—Appointment—Terms—Filling vacancies.** An advisory committee is hereby established to advise the director in the administration of the fruit tree certification and nursery improvement program.

(1) The committee shall consist of three fruit tree nurserymen, one pome fruit producer, and one stone fruit producer, and the director or his designated appointee.

(2) The director shall appoint this committee from the following recommendations: Three names are to be submitted for each position. The Washington state nurserymen's association is to submit names for the fruit tree nurserymen positions. The Washington state horticultural association is to furnish the names for the pome fruit producer and the stone fruit producer.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed

and qualified: *Provided*, That the first appointments to this committee beginning July 30, 1971, shall be for the following terms:

(a) Position no. 1—fruit tree nurseryman, three year term.

(b) Position no. 3—pome fruit producer, three year term.

(c) Position no. 2—fruit tree nurseryman, two year term.

(d) Position no. 4—stone fruit producer, one year term.

(e) Position no. 5—fruit tree nurseryman, one year term.

In the event a committee member resigns, is disqualified, or vacates his position on the committee for any other reason the vacancy shall be filled by the director under the provisions of this section governing appointments. [1971 ex.s. c 33 § 8.]

**15.13.330 Advisory committee—Qualifications for members.** Members of the advisory committee shall be residents of this state, each of whom either individually or as an executive officer of a corporation, firm, or partnership is or has been actually engaged in fruit tree production as a licensed nursery dealer or producing pome or stone fruits within the state of Washington for a period of five years and has during that period derived a substantial portion of his income from either fruit tree production as a licensed nursery dealer or pome fruit production or stone fruit production as is required by the positions noted above. [1971 ex.s. c 33 § 9.]

**15.13.340 Collection charge on delinquent assessments.** (1) There is hereby levied on all delinquent and unpaid assessments a collection charge of twenty percent of the amount due and to be added thereto for each license period such assessment is delinquent.

(2) The director shall not issue a nursery dealer license to any applicant who has failed to pay any assessment due under the provisions of this chapter. [1971 ex.s. c 33 § 10.]

**15.13.350 Denial, suspension, revocation of license—Grounds.** The director may, whenever he determines that an applicant or licensee has violated any provisions of this chapter, and complying with the notice and hearing requirement and all other provisions of chapter 34.04 RCW, as enacted or hereafter amended, concerning contested cases, deny, suspend or revoke any license issued or which may be issued under the provisions of this chapter. [1971 ex.s. c 33 § 11.]

**15.13.360 Hearings—Subpoenas—Witnesses, fees.** The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records in any hearing in the county where the person licensed under this chapter resides affecting the authority or privilege granted by a license issued under the provisions of this chapter. Witnesses except complaining witnesses, shall be entitled to fees for attendance and travel as provided for in chapter



2.40 RCW, as enacted or hereafter amended. [1971 ex.s. c 33 § 12.]

**15.13.370 Request for inspector's services during shipping season—Costs—Certificate of inspection.** Any person licensed under the provisions of this chapter may request, upon the payment of actual costs to the department as prescribed by the director, the services of a horticultural inspector at such licensee's place of business or point of shipment during the shipping season. Subsequent to inspection such horticultural inspector shall issue to such licensee a certificate of inspection in triplicate signed by him covering any horticultural plants which he finds not to be infected with plant pests and in compliance with the provisions of this chapter and rules adopted hereunder. [1971 ex.s. c 33 § 13.]

**15.13.380 Inspection and certification fees—Director to prescribe—When due and payable—Arrears.** The director shall prescribe, in addition to those costs provided for in RCW 15.13.370, any other necessary fees to be charged the owner or his agent for the inspection and certification of any horticultural plant subject to the provisions of this chapter or rules adopted hereunder, and for the inspection and certification when such inspection and certification is performed at the request of any person financially interested in any horticultural plants which are, or are not subject to the provisions of this chapter or rules adopted hereunder, produced in or imported into this state. The inspection fees provided for in this chapter shall become due and payable by the end of the next business day and if such are not paid within the prescribed time, the director may withdraw inspection or refuse to perform any inspection or certification service for the person in arrears: *Provided*, That in such instances the director may demand and collect inspection and certification fees prior to inspecting and certifying any horticultural plants for such person. [1971 ex.s. c 33 § 14.]

**15.13.390 Unlawful selling, shipment or transport of plants within state, when.** It shall be unlawful for any person to sell, ship or transport any horticultural plant in this state unless it is apparently free from plant pests. No person shall sell, ship or transport any horticultural plant in this state unless it meets the requirements of this chapter or rules adopted hereunder. [1971 ex.s. c 33 § 15.]

**15.13.400 Unlawful shipment or delivery of plants into state, when—Certificate and inspection requirements.** (1) It shall be unlawful for any person to ship or deliver any horticultural plant into this state unless such horticultural plant is accompanied by an inspection certificate from the state or country of origin stating that such horticultural plant is apparently free of plant pests and in conformance with not less than the minimal requirements of this chapter or rules adopted hereunder. The director may require the shipper or receiver

to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director in Olympia, Washington, on or before the date such horticultural plants enter into the state of Washington.

(2) The director may by rule require that any or all such horticultural plants delivered or shipped into the state be inspected for conformance with the requirements of this chapter and rules adopted hereunder, prior to release by the person delivering or transporting such horticultural plants into this state even though accompanied by acceptable inspection certificates issued by the state or country of origin. [1971 ex.s. c 33 § 16.]

**15.13.410 Shipments into state to be marked or tagged—Contents.** Each shipment of horticultural plants transported or shipped into the state and/or offered for retail sale within the state shall be legibly marked or tagged in a conspicuous manner, and shall include the following:

(1) The kind of horticultural plant(s).

(2) When plants, other than floricultural products are on display for retail sale, one plant per block shall be tagged as prescribed above. On mixed lots or blocks, each plant shall be tagged as prescribed above.

(3) Any other necessary information prescribed, by rule, by the director. The director may, whenever he finds that any horticultural plant is not properly marked, order it off sale until it is properly marked, or order that it be returned to the consignor for proper marking. [1971 ex.s. c 33 § 17.]

**15.13.420 Unlawful acts enumerated—Certain persons exempted from penalty for false advertising.** It shall be unlawful for any person:

(1) To falsely represent that he is the agent or representative of any nursery dealer in horticultural plants;

(2) To deceive or defraud another in the sale of horticultural plants by substituting inferior or different grades from those ordered;

(3) To bring into this state any horticultural plants infested with plant pests, or to sell, offer for sale, hold for sale, distribute, ship or deliver any horticultural plants infested with plant pests;

(4) To sell, offer for sale, hold for sale, solicit orders for or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;

(5) To advertise the price of horticultural plants without denoting the size of the plant material;

(6) To make the following representations directly or indirectly, without limiting the effects of this section:

(a) That any horticultural plant has been propagated by grafting or budding methods, when such is not the fact;

(b) That any horticultural plant is healthy and will grow anywhere without the use of fertilizer, or will survive and produce without special care, when such is not a fact;

(c) That any horticultural plant blooms the year around, or will bear an extraordinary number of blooms of unusual size or quality, when such is not a fact;

(d) That any horticultural plant is a new variety, when in fact it is a standard variety to which the person who is selling or holding such horticultural plant for sale has given a new name;

(e) That any horticultural plant cannot be purchased through usual outlets, or that limited stocks are available, when such is not the fact;

(f) That any horticultural plant offered for sale will be delivered in time for the next, or any specified, seasonal planting when the seller is aware of factors which make such delivery improbable;

(g) That the appearance of any horticultural plant is normal or usual when the appearance so represented is in fact abnormal or unusual;

(h) That the root system of any horticultural plant is appreciably larger than that which actually exists, whether accomplished by means of packaging, balling or otherwise;

(i) That bulblets are bulbs;

(j) That any horticultural plant is rare or an unusual item, when such is not the fact;

(7) To sell, offer for sale or hold for sale, or plant for another person any horticultural plants on the basis of grade, unless such horticultural plants have been graded and/or classified and meet the standards prescribed by the director for such grades and/or classifications;

(8) To substitute any other horticultural plant for a horticultural plant covered by an inspection certificate;

(9) To sell, offer for sale, or hold for sale, or plant for another person, any horticultural plant which is dead, in a dying condition, seriously broken, frozen, or damaged, or abnormally potbound;

(10) To sell, offer for sale, or hold for sale, or plant for another person as other than collected horticultural plant any such collected horticultural plant within one year after its collection in its natural habitat unless it is conspicuously marked or labeled as a collected horticultural plant.

No publisher, radio and television broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the grower, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 15.13.490 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the grower, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement. [1971 ex.s. c 33 § 18.]

**15.13.430 Hold order on infected or infested plants—Selling, offering to sell or moving unlawful.** When the department has cause to believe that any horticultural plants are infested or infected by any plant

pest, chemical or other damage, the director may issue a hold order on such horticulture plants. It shall be unlawful to sell, offer for sale, or move such plants until released in writing by the director. [1971 ex.s. c 33 § 19.]

**15.13.440 Order of condemnation, when—Finality.** The director shall condemn any or all horticultural plants in a shipment or when any such horticultural plants are held for sale, or offered for sale and they are found to be dead, in a dying condition, seriously broken, damaged or frozen or abnormally potbound and shall order such horticultural plants to be destroyed or returned at shipper's option. The director's order shall be final fifteen days after the date of issuance, unless within such time the superior court of the county where the condemnation occurred shall issue an order requiring the director to show cause why his order should not be stayed. [1971 ex.s. c 33 § 20.]

**15.13.450 Injunction to prevent violations.** The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs, notwithstanding the existence of other remedies at law. [1971 ex.s. c 33 § 21.]

**15.13.460 Prior rules adopted and continued.** The repeal of RCW 15.13.010 through 15.13.210 and RCW 15.13.900 and 15.13.910 by section 30, chapter 33, Laws of 1971 ex. sess. (uncodified) and the enactment of the remaining sections of this chapter shall not be deemed to have repealed any rules adopted under the provisions of RCW 15.13.010 through 15.13.210 and RCW 15.13.900 and 15.13.910 and in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. For the purpose of this chapter it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to the provisions of chapter 34.04 RCW, concerning the adoption of rules, and any amendment or repeal of such rules after July 1, 1971, shall be subject to the provisions of chapter 34.04 RCW concerning the adoption of rules as enacted or hereafter amended. [1971 ex.s. c 33 § 24.]

**15.13.470 Disposition of fees and assessments.** All fees except assessment collected under the provisions of this chapter shall be paid to the state treasurer to be deposited in the nursery inspection account in the state general fund as provided in RCW 43.79.330 to be used only for the enforcement of this chapter. All moneys collected under the provisions of RCW 15.13.010 through 15.13.210, 15.13.900 and 15.13.910 and remaining in such nursery inspection account on July 1, 1971, shall be used for the enforcement of this chapter. All the moneys in such nursery inspection account shall be subject to the provisions of RCW 43.79.330, provided all fees collected for fruit tree, fruit tree seedling and fruit tree rootstock assessments as set forth in this chapter shall be deposited in the northwest nursery fund to be used only for the Washington fruit tree certification and nursery improvement programs as set

forth in this chapter and chapter 15.14 RCW. [1971 ex.s. c 33 § 25.]

**15.13.480 Cooperation, agreements with other governmental agencies.** The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter. [1971 ex.s. c 33 § 26.]

**15.13.490 General penalties—Subsequent offenses.** Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense. [1971 ex.s. c 33 § 27.]

**15.13.920 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1971 ex.s. c 33 § 22.]

**15.13.930 Existing liabilities not affected.** The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1971. [1971 ex.s. c 33 § 23.]

**15.13.940 Severability—1971 ex.s. c 33.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 33 § 28.]

**15.13.950 Effective date—1971 ex.s. c 33.** This chapter shall take effect on July 1, 1971. [1971 ex.s. c 33 § 29.]

### Chapter 15.14 PLANTING STOCK

#### Sections

|           |   |
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| 15.14.030 | Rules—Scope.  |
| 15.14.040 | Acquisition of property—Washington state crop improvement nurseries.  |
| 15.14.050 | Foundation and breeder planting stock—Research—Availability to producers and commercial growers.            |
| 15.14.060 | Surplus stock—Availability to produce certified or registered stock—Sale, conditions.                       |
| 15.14.070 | Certificates—Samples for checking, reports.   |
| 15.14.080 | Planting stock areas—Establishment—Place—Notice and hearing.  |
| 15.14.090 | Permit to make commercial planting in a planting stock area.  |
| 15.14.100 | Departmental fees.  |
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| 15.14.120 | Agreements with educational and governmental entities.  |
| 15.14.130 | Deposit of funds in northwest nursery fund—Use.   |
| 15.14.140 | Unlawful acts.  |
| 15.14.150 | Injunctions.  |
| 15.14.900 | Chapter cumulative and nonexclusive.  |

15.14.910 Other laws not affected.  
15.14.920 Severability—1961 c 83.

**15.14.010 Definitions.** For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society and association and every officer, agent or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Plant propagating stock" hereinafter referred to as "planting stock" includes any propagating materials used for the production or processing of horticultural, floricultural, viticultural or olericultural plants for the purpose of being sold, offered for sale or exposed for sale for planting or reproduction purposes: *Provided*, That it shall not include agricultural and vegetable seeds as defined in RCW \*15.48.010, (2) and (3).

(6) "Certified plant stock" means the progeny of foundation, registered or certified plant stock if designated foundation and plant propagating materials that are so handled as to maintain satisfactory genetic identity and purity and have met certification standards required by this chapter and have been approved and certified by the director.

(7) "Foundation planting stock" means plant stock propagating materials that are increased from breeder or designated plant stock and are so handled as to most nearly maintain specific genetic identity and purity. Foundation plant stock, established by designation shall be that plant stock so designated by the director.

(8) "Breeder planting stock" means plant propagating materials directly controlled by the originating or in certain cases the sponsoring plant breeder or institution, which may include the department and which provides the source of the foundation plant stock.

(9) "Registered planting stock" means the progeny of foundation or registered planting stock or plant propagating material that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the director. This class of planting stock shall be of a quality suitable for the production of certified planting stock. [1961 c 83 § 1.]

**\*Reviser's note:** Chapter 15.48 RCW was repealed by 1969 c 63 § 54. See RCW 15.49.050 and 15.49.060 for definitions of agricultural and vegetable seeds.

**15.14.020 Certifying officer—Rules.** The director is hereby designated the legal plant certifying officer for the state and he may adopt the rules necessary to carry

out the purpose and provisions of this chapter. All such rules shall be adopted pursuant to the provisions of chapter 34.04 as enacted or hereafter amended concerning the adoption of rules. [1961 c 83 § 2.]

**15.14.030 Rules—Scope.** The director may adopt rules concerning but not limited to:

- (1) The certification of planting stock as to variety, type, strain or other genetic character.
- (2) The freedom of planting stock from infection by plant pests.
- (3) Grades and classifications for the various varieties, types or strains of planting stock and standards and sizes for such grades and/or classifications.
- (4) The labeling and identification of certified planting stock.
- (5) The inspection of planting stock prior to planting, prior to and during harvest and subsequent to harvest. [1961 c 83 § 3.]

**15.14.040 Acquisition of property—Washington state crop improvement nurseries.** The director may acquire by purchase, gift, devise, lease or rental, real property and any other type property, including any equipment, products or planting stock necessary to carry out the purpose of this chapter. Such real property shall be designated as Washington state crop improvement nurseries and may be located in remote or outlying areas where the breeder or foundation planting stock may be planted to better protect its genetic identity and freedom from plant pests. [1961 c 83 § 4.]

**15.14.050 Foundation and breeder planting stock—Research—Availability to producers and commercial growers.** The director may, for the purposes of maintaining and/or improving the genetic characteristics and freedom from plant pests of any foundation and breeder planting stock, make such foundation and breeder stock readily available to producers and commercial growers, acquire and plant such foundation and breeder planting stock for research and propagation. [1961 c 83 § 5.]

**15.14.060 Surplus stock—Availability to produce certified or registered stock—Sale, conditions.** The director shall make available to producers who desire to produce certified or registered planting stock for their own use or to commercial growers of certified or registered planting stock any or all surplus planting stock: *Provided*, That the director may retain a large enough supply of such foundation and breeder planting stock so as to maintain or improve its genetic characteristics and make future supplies of such foundation and breeder planting stock readily available to producers and commercial growers of certified and registered planting stock. The director may sell such foundation and breeder stock and shall sell it at its actual cost to the department, as determined by the director. A condition of the sale may be that the purchaser may only use such foundation and breeder planting stock for the purpose of producing certified or registered planting stock and that it may be inspected by the director

whenever necessary during its growing period or at harvest time or subsequent to harvest for certification if it is found to meet the requirements of this chapter and rules adopted hereunder for certified or registered planting stock. [1961 c 83 § 6.]

**15.14.070 Certificates—Samples for checking, reports.** The director may, subject to rules adopted under the provisions of this chapter:

- (1) Subsequent to inspection of certified or registered planting stock prior to planting and inspection during its growth and harvest and subsequent to harvest issue certificates stating that such planting stock is certified or registered planting stock.
- (2) Take samples in reasonable amounts as necessary of planting stock certified or registered under the provisions of subsection (1) of this section for the purpose of checking and testing to see if such certified and registered planting stock is maintaining its genetic characteristics and freedom from plant pests. Such samples of certified or registered planting stock shall be planted and checked in Washington state crop improvement nurseries. Reports of the results of the test plantings shall be made available to the producers or commercial growers of certified or registered planting stock forthwith. [1961 c 83 § 7.]

**15.14.080 Planting stock areas—Establishment—Place—Notice and hearing.** The director may, subsequent to obtaining real property in a remote area for the purpose of establishing a Washington state crop improvement nursery, establish a planting stock area for the purpose of maintaining genetic qualities of planting stock and their freedom from plant pests. Such a planting stock area may be established only in areas where no commercial production of the planting stock to be planted in such Washington state crop improvement nursery is planted. No planting stock area shall be established until the director has published in a newspaper of general circulation, his intent to establish such planting stock area in the county or counties where it is to be located, once each week for three successive weeks, and that a public hearing will be held, within ten days subsequent to the last publication of such notice, for the purpose of determining the feasibility of establishing such a planting stock area. Such hearings shall be subject in addition to the foregoing requirements, to the provisions of chapter 34.04 as enacted or hereafter amended concerning contested cases. The director may in addition to the notice by publication use any other media to inform the public of his intent to establish a planting stock area. [1961 c 83 § 8.]

**15.14.090 Permit to make commercial planting in a planting stock area.** No person shall make commercial plantings of any plants in a planting stock area which might affect the genetic characteristics of foundation or breeder planting stock in the Washington state crop improvement nursery located in such area, or any plantings of plants which may cause such foundation or breeder planting stock to become infested with plant pests without first obtaining a permit from the director.

The director may refuse to issue such a permit if he determines subsequent to a hearing as provided for contested cases in chapter 34.04 as enacted or hereafter amended, that such plantings may endanger the planting stock located in such nursery. [1961 c 83 § 9.]

**15.14.100 Departmental fees.** The director shall by rule establish reasonable fees which may be charged by the department for the inspection, testing and certification of planting stock certified, registered, foundation or breeder planting stock. [1961 c 83 § 10.]

**15.14.110 Certification as foundation or breeder seed—Requirements for certification of propagators' plant materials.** The director may accept for certification as foundation or breeder seed any plant material grown or produced by Washington state university, the United States department of agriculture or propagators whose plant materials are produced in conformance with the requirements of this chapter and rules adopted hereunder. Such propagators' plant materials shall have been under the observation of the director for a period of not less than one year pursuant to periodic inspections by the director before he may certify them as foundation or breeder planting stock. [1961 c 83 § 11.]

**15.14.120 Agreements with educational and governmental entities.** The director may cooperate with and enter into agreements with Washington state university, experimental stations, governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter. [1961 c 83 § 12.]

**15.14.130 Deposit of funds in northwest nursery fund—Use.** All the moneys collected by the director under the provisions of this chapter shall be paid into the northwest nursery fund as created in RCW 15.69-.020 and shall be used by the director only to carry out the provisions of this chapter. [1961 c 83 § 13.]

**15.14.140 Unlawful acts.** It shall be unlawful for any person to sell, offer for sale, hold for sale, label, identify, represent or to advertise any planting stock as being certified, registered, foundation or breeder planting stock unless it has been inspected by the director and he has issued a certificate stating that such planting stock has met the requirements of this chapter and rules adopted hereunder and that it is properly identified and labeled. [1961 c 83 § 14.]

**15.14.150 Injunctions.** The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of Thurston county, notwithstanding the existence of other remedies at law. [1961 c 83 § 15.]

**15.14.900 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1961 c 83 § 16.]

**15.14.910 Other laws not affected.** The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this act becomes effective. [1961 c 83 § 17.]

**Reviser's note:** "this act" refers to 1961 c 83 which became effective at midnight June 7, 1961, see preface 1961 session laws.

**15.14.920 Severability—1961 c 83.** If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 83 § 18.]

## Chapter 15.17 STANDARDS OF GRADES AND PACKS

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| 15.17.020 | Definitions.  |
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- 15.17.930 Effective date—1963 c 122.  
 15.17.940 Severability—1963 c 122.  
 15.17.950 Repealer.

*Bread, weights and measures standards: RCW 19.92.100–19.92.120.*

*Grain and other commodities, standard grades: Chapter 22.09 RCW.*

*Green peas, study of quality standards for determining grades: RCW 15.04.130, 15.04.140.*

*Hops, bale, tare: RCW 19.92.240.*

*Weights and measures, standards, packages, boxes, etc.: Chapter 19.94 RCW.*

**15.17.010 Purpose.** The purpose of this chapter is to provide uniform grades and standards for horticultural plants and products and to provide for the inspection of such horticultural plants or products in the state of Washington. This chapter is important and vital to the maintenance of a high level of public health and welfare of the citizens of this state by protecting the national and international reputation of horticultural plants and products grown and shipped from this state and protecting the citizens of this state from the importation and sale of ungraded, immature, and inferior horticultural plants and products so as to prevent a condition conducive to substitution, confusion, deception, and fraud, a condition which if permitted to exist would tend to interfere with the orderly and fair marketing of horticultural plants and products essential to the well being of the citizens of this state. It is hereby declared that this chapter is enacted in the exercise of the police power of this state for the purpose of protecting the immediate and future health, safety, and general welfare of the citizens of this state. [1963 c 122 § 1.]

**15.17.020 Definitions.** For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Horticultural plant or product" includes, but is not limited to, any horticultural, floricultural, viticultural, and olericultural plant, growing or otherwise, and their products whether grown above or below the ground's surface.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants and products are grown, stored, handled, or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants or products.

(6) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface, horticultural plants or products which are in quality, size, condition, or any other respect so superior to those in the interior of the container in the unexposed portion as to materially misrepresent the contents. Such pack is

deceptive when the outer or exposed surface is composed of horticultural plants or products whose size is not an accurate representation of the variation of the size of such horticultural plants or products in the entire container, even though such horticultural plants or products in the container are virtually uniform in size or comply with the specific horticultural plant or product for which the director in prescribing standards for grading and classifying has prescribed size variations or if such size variations are prescribed by law.

(7) "Deceptive arrangement or display" of any horticultural plants or products, means any bulk lot or load, arrangement or display of such horticultural plants or products which has in the exposed surface, horticultural plants or products which are so superior in quality, size, condition, or any other respect to those which are concealed, or the unexposed portion, as to materially misrepresent any part of such bulk lot or load, arrangement, or display.

(8) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any container, or upon the label or lining of any such container, or upon the wrapper of any horticultural plants or products, or upon any such horticultural plants or products, or any placard used in connection therewith and having reference to such horticultural plants or products. A statement, design, or device is false or misleading when the horticultural plant or product or container to which it refers does not conform to such statement.

(9) "Container" means any container, subcontainer used within a container, or any type of a container used to prepackage any horticultural plants or products: *Provided*, That this does not include containers used by a retailer to package such horticultural plants or products sold from a bulk display to a consumer.

(10) "Agent" means broker, commission merchant, auctioneer, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another.

(11) "Inspection and certification" means, but is not limited to, the inspection of any horticultural plant or product at any time prior to, during, or subsequent to harvest, by the director, and the issuance by him of a written permit to move or sell or a written certificate stating the grade, classification, and if such horticultural plants or products are free of plant pests and/or other defects.

(12) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants. [1963 c 122 § 2.]

**15.17.030 Enforcement—Director's duties—Rules—Adoption—Changes—Hearings.** (1) The director shall enforce and carry out the provisions of

this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.04 RCW, concerning the adoption of rules, as enacted or hereafter amended.

(2) The director shall, whenever he considers the adoption of rules or amendments to existing rules, consult with growers, associations of growers, or other persons affected by such rules or amendments.

(3) The director may, on his own motion or shall, on the written application of twenty-five or more interested persons, call a hearing for the purpose of considering changes to any rules prescribed under the provisions of this chapter. [1963 c 122 § 3.]

*Adoption of rules in respect to horticultural plants and products: RCW 15.17.110.*

**15.17.040 Unlawful to sell, offer for sale, or ship diseased, pest injured or decayed fruits or vegetables—Exception.** It shall be unlawful to sell, offer for sale, hold for sale, ship, or transport any fruits or vegetables in bulk or in containers unless ninety percent or more by weight or count, as established by inspection, are free from (1) plant pest injury which has penetrated or damaged the edible portions; (2) worms, mold, slime, or decay. The provisions of this section shall not apply to those fruits or vegetables for which grades and/or classifications and standards for such grades and/or classifications have been especially provided under the provisions of this chapter or by rules adopted hereunder. [1963 c 122 § 4.]

**15.17.050 Rules for grades and classifications, sizes of containers, inspections, etc.—Authority of director to promulgate.** The director may, unless otherwise provided for by the laws of this state, or in this chapter, establish rules:

(1) Providing standards and sizes for grades and/or classifications especially provided for in this chapter for any horticultural plant or product;

(2) Providing grades and/or classifications for any horticultural plant or product not especially provided for in this chapter. In establishing such standards for grades and/or classifications, the director shall take into account the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury. When adopting grades and/or classifications for any horticultural plant or product not especially provided for in this chapter the director may consider and adopt grades and/or classifications established by the secretary of agriculture of the United States in effect on the \*effective date of this chapter, and any subsequent amendment to such grades and/or classifications prescribed by the said secretary;

(3) Fixing the sizes and dimensions of containers to be used for the packing or handling of any horticultural plant or product;

(4) Concerning the inspection of any horticultural plant or product subject to the provisions of this chapter or in cooperation with the United States government or any other state;

(5) Necessary to carry out the purpose and provisions of this chapter. [1963 c 122 § 5.]

\*Effective date of chapter: RCW 15.17.930.

**15.17.060 Adoption of United States grades and classifications.** The director may adopt any United States grade and/or classification for any horticultural plant or product especially provided for in this chapter if such United States grade and/or classification is substantially equivalent to or better than the minimum grade and/or classification especially provided for such horticultural plant or product in this chapter. [1963 c 122 § 6.]

**15.17.070 Combination grades.** The director may establish combination grades for fruits and vegetables, and standards and sizes for such combination grades. The standards for such combination grades shall, by percentage quantities, include two or more of the grades, except cull grades, especially provided for in this chapter or adopted by rule hereunder. [1963 c 122 § 7.]

**15.17.080 Fresh fruits—Culls—Container markings—Designation on bills of lading, invoices, etc.** It shall be unlawful for any person to sell fresh fruits for fresh consumption classified as culls under the provisions of this chapter or rules adopted hereunder unless such fruit is packed in one-half bushel or one bushel wooden baskets ring faced, with the fruit in the ring face representative of the size and quality of the fruit in such baskets. Such baskets shall be lidded and the words "cull" including the kind of fruit and variety must appear on the top and side of each basket and on any label thereon in clear and legible letters at least two and one-half inches high. Every bill of lading, invoice, memorandum, and document referring to said fruit shall designate them as culls. [1963 c 122 § 8.]

**15.17.090 Private grades or brands—Approval and registration.** The director may approve and register a private grade or brand for any horticultural plant or product: *Provided*, That such private grade or brand shall not be lower than the second grade and/or classification established under the provisions of this chapter or rules adopted hereunder for such horticultural plant or product. [1963 c 122 § 9.]

**15.17.100 Apple grades and classifications—Standards—Color standards—Hearings—Notices—Violations.** The director shall by rule establish grades and/or classifications for apples and standards and sizes for such grades and/or classifications. In establishing such standards for grades and/or classifications, the director shall take into account the factors of maturity, soundness, color, shape, and freedom from mechanical and plant pest injury. When establishing standards of color requirements for red varieties and partial red varieties of apples, the director shall establish color standards for such varieties which are not less than the following:

|                         |                 |
|-------------------------|-----------------|
| 1. Arkansas Black       | Fifteen percent |
| 2. Spitzenburg (Esopus) | Fifteen percent |
| 3. Winesap              | Twenty percent  |



|                         |                 |
|-------------------------|-----------------|
| 4. King David           | Fifteen percent |
| 5. Delicious            | Twenty percent  |
| 6. Stayman Winesap      | Ten percent     |
| 7. Vanderpool           | Ten percent     |
| 8. Black Twig           | Ten percent     |
| 9. Jonathan             | Ten percent     |
| 10. McIntosh            | Ten percent     |
| 11. Rome                | Ten percent     |
| 12. Red Sport varieties | Twenty percent  |

Whenever red sport varieties are marked as such, they shall meet the color requirements of red sport varieties.

The director may upon his own motion or upon the recommendation of an organization such as the Washington state horticultural association's grade and pack committee hold hearings in each major apple producing area concerning changes in apple grades and/or standards for such apple grades as proposed by the director or as recommended by such organization.

The hearings on such recommendations for changes in grades for apples and/or standards for such grades shall be subject to chapter 34.04 RCW concerning the adoption of rules and the director shall publish notice of such hearings at least three times in the legal newspaper with the widest circulation in the major apple producing areas where such hearings are to be held. The last publication of such notice shall be published at least fourteen days prior to such hearings.

The director in making his final determination on his recommendation or those proposed by such organization shall give due consideration to testimony given by producers or producer organizations at such hearing.

It shall be unlawful for any person to sell, offer for sale, hold for sale, ship, or transport any apples unless they comply with the provisions of this chapter and the rules adopted hereunder. [1963 c 122 § 10.]

**15.17.110 Apricots, cantaloupes, prunes, peaches, pears, potatoes and tomatoes—Grades and classifications—Standards—Violations—Adoption of horticultural plants and products rules—Hearings—Director's authority not limited.** The director shall by rule establish grades and/or classifications for:

- (1) Apricots and standards and sizes for such grades and/or classifications;
- (2) Cantaloupes and standards and sizes for such grades and/or classifications;
- (3) Italian prunes and standards and sizes for such grades and/or classifications;
- (4) Peaches and standards and sizes for such grades and/or classifications;
- (5) Pears and standards and sizes for such grades and/or classifications;
- (6) Potatoes and standards and sizes for such grades and/or classifications;
- (7) Tomatoes and standards and sizes for such grades and/or classifications.

In establishing standards for grades and/or classifications of apricots, cantaloupes, Italian prunes, peaches, pears, potatoes, and tomatoes, the director shall consider, when applicable, the factors of maturity, soundness,

color, shape, size, and freedom from mechanical and plant pest injury.

It shall be unlawful for any person to sell, offer for sale, hold for sale, ship, or transport apricots, cantaloupes, Italian prunes, peaches, pears, potatoes, and tomatoes unless they comply with the provisions of this chapter or rules adopted hereunder.

The provisions of this section and of RCW 15.17.100 shall not in any manner be construed to limit the director's authority to adopt grades and/or classifications for any other horticultural plant or product not especially mentioned in such sections or standards and sizes for grades and/or classifications.

The director when adopting rules in respect to horticultural plants or products shall hold a public hearing and shall consult with affected parties, such as growers, associations of growers and handlers and any final rule adopted as a result of a hearing shall be designed to promote orderly marketing and shall be reasonable and necessary and based upon the requirements and conditions of the industry and shall be for the purpose of promoting the well-being of the members of the horticultural industry as well as for the general welfare of the people of the state. [1963 c 122 § 11.]

*Adoption of rules: RCW 15.17.030.*

**15.17.120 Continuation of grades and classifications adopted pursuant to repealed chapter—Amendment or repeal.** The grades and/or classifications and the standards and sizes for such grades and/or classifications relating to horticultural plants and products specifically mentioned in RCW 15.17.100 and 15.17.110 and included in or adopted under the provisions of chapter 15.16 RCW and in effect immediately prior to the repeal of RCW 15.16.010 through RCW 15.16.490 shall be considered to have been adopted by the director as rules under the provisions of this chapter pursuant to the provisions of chapter 34.04 RCW concerning the adoption of rules, as enacted or hereafter amended. Any amendment or repeal of such rules after the \*effective date of this chapter shall be subject to the provisions of chapter 34.04 RCW concerning the adoption of rules as enacted or hereafter amended. [1963 c 122 § 12.]

**\*Effective date of chapter:** RCW 15.17.930.

*Continuation of rules adopted pursuant to repealed chapter: RCW 15.17.920.*

**15.17.130 Exemption of certain bulk shipments, processed, or manufactured byproducts from chapter.** The provisions of this chapter shall not apply:

(1) To the movement in bulk of any horticultural plant or product from the premises where grown or produced to a packing shed, warehouse, or processing plant within the area of production prior to inspection and/or grading where such inspection and/or grading is to be performed at such packing shed, warehouse, or processing plant; nor

(2) To any processed, canned, frozen, or dehydrated horticultural plants or products; nor

(3) Shall this chapter prevent the manufacture of any infected horticultural plant or product into byproducts or its shipment to a byproducts plant. [1963 c 122 § 13.]

*Exemption of sales less than five hundred pounds: RCW 15.17.280.*

**15.17.140 Inspection and certification—Application for.** Any person financially interested in any horticultural plants or products in this state may apply to the director for inspection and certification as to whether such horticultural plants or products meet the requirements provided for by the laws of this state, the provisions of this chapter or rules adopted hereunder, or the standards for grading and classifying such horticultural plants or products established by the secretary of the United States department of agriculture, or by any other state, or by contractual agreement between buyers and sellers of such horticultural plants or products. [1963 c 122 § 14.]

**15.17.150 Inspection and certification—Fees.** The director shall prescribe the necessary fees to be charged, (1) to the owner or his agent for the inspection and certification of any horticultural plants or products subject to the provisions of this chapter or rules adopted hereunder, (2) for inspection and certification when such inspection and certification is performed at the request of any person financially interested in any horticultural plants or products which are, or are not, subject to the provisions of this chapter or rules adopted hereunder, produced in, or imported into, this state. The fees provided for in this section shall become due and payable by the end of the next business day and if such fees are not paid within the prescribed time the director may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears: *Provided*, That the director in such instances may demand and collect inspection and certification fees prior to inspecting and certifying any horticultural plants or products for such person. [1963 c 122 § 15.]

**15.17.160 Third party grading for buyer and seller—Authority of director to provide—Fees.** The director may upon application of both buyer and seller provide a state inspector to perform third party grading for the parties and shall charge fees to cover the cost thereof on the same terms and conditions as provided in RCW 15.17.150 for inspection and certification. [1963 c 122 § 16.]

**15.17.170 Inspection certificate as evidence.** Every inspection certificate issued by the director under the provisions of this chapter shall be received in all the courts of the state as prima facie evidence of the statements therein. [1963 c 122 § 17.]

**15.17.180 Containers—Stamping.** Any container packed with any horticultural plant or product for which a grade and/or classification has been especially provided in this chapter or adopted by rule hereunder, may be stamped with either or both the state grade and/or classification and the United States grade and/or classification. [1963 c 122 § 18.]

**15.17.190 Inspections—Right of access—Samples—Denial of access—Search warrants.** The director may enter during business hours and inspect any horticultural facility where any horticultural plants or products are produced, stored, packed, delivered for shipment, loaded, shipped, being transported or sold, and may inspect all such horticultural plants or products and the containers thereof and the equipment in any such horticultural facility. The director may take for inspection such representative samples of such horticultural plants or products and such containers as may be necessary to determine whether or not provisions of this chapter or rules adopted hereunder have been violated, and may subject such samples of horticultural plants or products to any method of inspection or testing. Should the director be denied access to any horticultural facilities where such access was sought for the purpose set forth in this section, he may apply to a court of competent jurisdiction for a search warrant authorizing access to such horticultural facilities for said purpose. The court may upon such application issue the search warrant for the purpose requested. [1963 c 122 § 19.]

**15.17.200 Noncomplying horticultural plants or products—Enforcement procedure.** The director may affix to any such lot or part thereof of horticultural plants or products a tag or notice of warning that such lot of horticultural plants or products is held and stating the reasons therefor. It shall be unlawful for any person other than the director to detach, alter, deface, or destroy any such tag or notice affixed to any such lot, or part thereof, of horticultural plants or products, or to remove or dispose of such lot, or part thereof, in any manner or under conditions other than as prescribed in such tag or notice, except on the written permission of the director or the court.

The director shall forthwith cause a notice of non-compliance to be served upon the person in possession of such lot of horticultural plants or products. The notice of noncompliance shall include a description of the lot, the place where, and the reason for which, it is held, and it shall give notice that such lot of horticultural plants or products is a public nuisance and subject to disposal as provided in this section unless, within a minimum of seventy-two hours or such greater time as prescribed in the notice by the director, it is reconditioned or the deficiency is otherwise corrected so as to bring it into compliance.

If the person so served is not the sole owner of such lot of horticultural plants or products, or does not have the authority as an agent for the owner to bring it into compliance, it shall be the duty of such person to notify the director forthwith in writing giving the names and addresses of the owner or owners and all other persons known to him to claim an interest in such lot of horticultural plants or products. Any person so served shall be liable for any loss sustained by such owner or other person whose name and address he has knowingly concealed from the director.

If such lot of horticultural plants or products has not been reconditioned or the deficiency corrected so as to

bring it into compliance within the time specified in the notice, the director shall forthwith cause a copy of such notice to be served upon all persons designated in writing by the person in possession of such lot of horticultural plants or products to be the owner or to claim an interest therein. Any notice required by this section may be served personally or by mail addressed to the person to be served at last known address.

The director with the written consent of all such persons so served, is hereby authorized to destroy such lot of horticultural plants or products or otherwise abate the nuisance. If any such person fails or refuses to give such consent, then the director shall proceed in the manner provided for such purposes in this section.

If such lot of horticultural plants or products is perishable or subject to rapid deterioration the director may, through the prosecutor in the county where such horticultural plants or products are held, file a verified petition in the superior court of the said county to destroy such lot of horticultural plants or products or otherwise abate the nuisance. The petition shall state the condition of such lot of horticultural plants or products, that such lot of horticultural plants or products is held, and that notice of noncompliance has been served as provided in this chapter. The court may then order that such lot of horticultural plants or products be forthwith destroyed or the nuisance otherwise abated as set forth in said order.

If such lot of horticultural plants or products is not perishable or subject to rapid deterioration, the director may, through the prosecutor in the county in which it is located, file a petition within five days of the serving of the notice of noncompliance upon the owners or person in possession of such lot of horticultural plants or products in the superior court or justice court of the said county for an order to show cause, returnable in five days, why such lot of horticultural plants or products should not be abated. The owner or person in possession, on his own motion within five days from the expiration of the time specified in the notice of noncompliance, may file a petition in such court for an order to show cause, returnable in five days, why such lot of horticultural plants or products should not be released to the petitioner and any warning tags previously affixed removed therefrom.

The court may enter a judgment ordering that such lot of horticultural plants or products be condemned and destroyed in the manner directed by the court or relabeled, or denatured, or otherwise processed, or sold, or released upon such conditions as the court in its discretion may impose to insure that the nuisance will be abated. In the event of sale by the owner or the court, the costs of storage, handling, reconditioning, and disposal shall be deducted from the proceeds of the sale and the balance, if any, paid into the court for the owner. [1963 c 122 § 20.]

**15.17.210 Violations—Selling, offering for sale, or shipping plants or products not meeting grades, classifications, standards and sizes—Containers—Deceptive practices.** It shall be unlawful to sell, offer for sale,

hold for sale, ship, or transport any horticultural plants or products:

(1) Subject to the requirements of RCW 15.17.040 unless they meet such requirements;

(2) As meeting the grades and/or classifications and standards and sizes for such grades and/or classifications as adopted or amended by the director under RCW 15.17.050 unless they meet such standards and sizes for such grades and/or classifications;

(3) As meeting the standards and sizes for private grades or brands as approved by the director under RCW 15.17.090 unless they meet such standards and sizes;

(4) In containers other than the size and dimensions prescribed by the director, when he has prescribed by rule such size and dimensions for containers in which any horticultural plants or products will be placed or packed: *Provided*, That this subsection shall not apply when any such horticultural plants or products are being shipped or transported to a packing plant, processing plant, or cold storage facility for preparation for market;

(5) Unless the containers in which such horticultural plants or products are placed or packed are marked as prescribed by the director, with the proper United States and/or Washington grade and/or classification or private grades or brands of such horticultural plants or products;

(6) Unless the containers in which such horticultural plants or products are placed or packed are marked as prescribed by the director, which may include the following:

(a) The name and address of the grower, or packer, or distributor;

(b) The varieties of such horticultural plants or products;

(c) The size, weight, volume and/or count of such horticultural plants or products;

(7) Which are in containers marked or advertised for sale or sold as being graded and/or classified according to the standards and sizes prescribed by the director or by law unless such horticultural plants or products conform with such grades and/or classifications and their standards and sizes;

(8) Which are deceptively packed;

(9) Which are deceptively arranged or displayed;

(10) Which are mislabeled;

(11) Which do not conform to the provisions of this chapter or rules adopted hereunder. [1963 c 122 § 21.]

**15.17.220 Violations—Re-marking containers—Inspection certificates—Refusing or avoiding inspections—Moving tagged plants or products.** It shall be unlawful:

(1) To re-mark any container to a higher or superior grade than that marked thereon by the grower or packer of any horticultural plants or products, unless such horticultural plants or products meet the requirements of the higher grade;

(2) For any person to ship or transport or any carrier to accept any horticultural plant or product without an inspection certificate or permit when the director has

prescribed by rule that such horticultural plants or products shall be accompanied by an inspection certificate or permit issued by him when shipped or transported. Such inspection certificate or permit shall be on a form prescribed by the director and may include space for stamps or other methods of denoting that all assessments provided for by law have been paid before such horticultural plants or products may lawfully be delivered or accepted for shipment;

(3) For any consignee to accept any shipment of horticultural plants or products which is not accompanied by an inspection certificate or permit prescribed by rule under the provisions of this chapter;

(4) For any reason to refuse to submit any container, load, or display of horticultural plants or products to the inspection of the director, or refuse to stop any vehicle or equipment containing horticultural plants or products for the purpose of inspection by the director;

(5) For any person to move any horticultural plants or products or their containers to which any warning tags or notice from the place where it was affixed, except under a written permit from the director or under his specific direction. [1963 c 122 § 22.]

**15.17.230 Horticulture inspection districts established.** For the purpose of this chapter the state shall be divided into the following horticulture inspection districts to which the director may assign one or more inspectors-at-large who as a representative of the director shall supervise and administer regulatory and inspection affairs of the districts:

|                 |  |
|-----------------|--|
| District One:   | Walla Walla, Columbia, Garfield, Asotin, Whitman, Benton, Franklin |
| District Two:   | Spokane, Lincoln, Stevens, Ferry, Pend Oreille                     |
| District Three: | Adams, Grant   |
| District Four:  | Chelan, southern portion of Douglas                                |
| District Five:  | Yakima, Kittitas, Klickitat, Skamania                              |
| District Six:   | Clark, Cowlitz, Wahkiakum  |
| District Seven: | Lewis, Pacific, Thurston, Mason, Grays Harbor                      |
| District Eight: | Pierce, Kitsap, Jefferson, Clallam                                 |
| District Nine:  | King   |
| District Ten:   | Whatcom, Snohomish, San Juan, Skagit, Island                       |

District Eleven: Okanogan, northern portion of Douglas

*Provided*, That for purposes of efficiency and economy the director may by rule promulgated in accordance with the Administrative Procedure Act adjust district boundaries or abolish any district: *Provided, however*, That there shall be at least six districts in existence at all times. [1969 ex.s. c 76 § 2; 1963 c 122 § 23.]

**15.17.240 Collection, deposit and use of fees—Bond of inspectors-at-large—Accounting.** The inspectors-at-large in charge of such inspections shall collect the fees therefor and deposit them in the horticultural district fund in any bank in the district approved for the deposit of state funds. The inspectors-at-large shall expend fees deposited in the horticultural district fund to assist in defraying the expenses of inspections and they shall make payments from the horticultural district fund to the horticultural inspection trust fund in Olympia as authorized by the director in accordance with RCW 15.04.100. Inspectors-at-large shall furnish bonds to the state in amounts set by the administrative board, pursuant to RCW 43.17.090, with sureties approved by the director, conditioned upon the faithful handling of said funds for the purposes specified; and shall, on or before the tenth day of each month, render to the director a detailed account of the receipts and disbursements for the preceding month. [1963 c 122 § 24.]

**15.17.250 Annual reports of inspectors-at-large—Disposition of excess in fund.** On the thirtieth day of June of each year the inspectors-at-large shall render to the commissioners of every county in which such service has been rendered in their districts, a complete account of the past year's business. In the event that there is money remaining in any horticulture district fund after all expenses for such services have been paid, then, this amount shall be remitted to the contributors to such fund to the extent that it is in excess of fifty percent of the greater of the following amounts: (1) the gross fee income of the district for the fiscal year from which said excess remains; (2) the higher gross fee income of the two fiscal years immediately preceding the fiscal year from which said excess remains: *Provided*, That any remittance to a contributor under this section shall be in proportion to the amount such person contributed. [1969 ex.s. c 76 § 3; 1963 c 122 § 25.]

**15.17.260 Injunctions.** The director may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to this chapter in the superior court in which such violation occurs, notwithstanding the existence of other remedies at law. [1963 c 122 § 26.]

**15.17.270 Cooperation with governmental agencies.** The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of federal government in order to carry out the purpose and provisions of this chapter. [1963 c 122 § 31.]

**15.17.280 Exemptions.** There shall be exempt from the provisions of this chapter the sale of up to five hundred pounds of any fruits or vegetables sold by any producer where grown by any producer and sold directly by producer to ultimate consumer: *Provided*, That such fruits and vegetables shall meet the requirements of RCW 15.17.040. [1963 c 122 § 32.]

*Exemptions: RCW 15.17.130.*

**15.17.290 General penalty.** Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor. [1963 c 122 § 30.]

**15.17.900 Provisions cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1963 c 122 § 27.]

**15.17.910 Savings—1963 c 122.** The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this chapter. [1963 c 122 § 28.]

**15.17.920 Continuation of rules adopted pursuant to repealed chapter.** The repeal of chapter 15.16 RCW and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of chapter 15.16 RCW not in conflict with the provisions of this chapter and in effect immediately prior to such repeal. For the purpose of this chapter it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to the provisions of chapter 34.04 RCW, as enacted or hereafter amended, concerning the adoption of rules. Any amendment or repeal of such rules after the effective date of this chapter shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning the adoption of rules. [1963 c 122 § 29.]

*Continuation of grades and classifications adopted pursuant to repealed chapter: RCW 15.17.120.*

**15.17.930 Effective date—1963 c 122.** The effective date of this chapter is July 1, 1963. [1963 c 122 § 34.]

**15.17.940 Severability—1963 c 122.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 122 § 33.]

**15.17.950 Repealer.** Sections 15.16.010 through 15.16.490, chapter 11, Laws of 1961, and RCW 15.16.010 through 15.16.490 are hereby repealed. [1963 c 122 § 35.]

## Chapter 15.21 WASHINGTON FRESH FRUIT SALES LIMITATION ACT

| Sections  |                         |
|-----------|-------------------------|
| 15.21.010 | Declaration of purpose. |
| 15.21.020 | Unlawful practices.     |
| 15.21.030 | Cost.                   |
| 15.21.040 | Combination sales.      |
| 15.21.050 | Injunction.             |
| 15.21.060 | Penalties.              |
| 15.21.070 | Exempt sales.           |
| 15.21.900 | Chapter cumulative.     |
| 15.21.910 | Short title.            |
| 15.21.920 | Severability—1965 c 61. |

**15.21.010 Declaration of purpose.** Limitations or restrictions placed on the buyer by the seller offering fresh fruit for sale as to the amount that such prospective buyer may purchase of the total amount of such fresh fruit owned, possessed or controlled by the seller, may lead to or cause confusion, deceptive trade practices, and interfere with the orderly marketing of fresh fruit necessary for the public health and welfare, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the general health and welfare of the people of this state. [1965 c 61 § 1.]

**15.21.020 Unlawful practices.** It shall be unlawful to cause a limitation to be placed on the amount of fresh fruit that a purchaser may buy at retail or wholesale when such fresh fruit is offered for sale, through any media, below cost to the seller. The foregoing shall apply to all such fresh fruit offered for sale below cost and owned, possessed or controlled by such seller. [1965 c 61 § 2.]

**15.21.030 Cost.** Cost for the purpose of this chapter, shall be that price paid for fresh fruit by the seller or the actual replacement cost for such fresh fruit: *Provided*, That the delivered invoice price to such seller shall be prima facie evidence of the price paid for such fresh fruit by the seller. [1965 c 61 § 3.]

**15.21.040 Combination sales.** When one or more items are offered for sale or sold with one or more items at a combined price, or offered individually or as a package or a unit to be given with the sale of one or more items, each and all such items shall for the purpose of this chapter be deemed to be offered for sale, and as to such transaction the cost basis shall be the combined cost basis of all such items as determined pursuant to RCW 15.21.030. [1965 c 61 § 4.]

**15.21.050 Injunction.** Any person, prosecuting attorney, or the attorney general may bring an action to enjoin the violation or threatened violation of the provisions of this chapter in the superior court in the county where such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1965 c 61 § 5.]

**15.21.060 Penalties.** Any person violating the provisions of this chapter is guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent offense: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1965 c 61 § 6.]

**15.21.070 Exempt sales.** The provisions of this chapter shall not apply to the following sales at retail or sales at wholesale:

- (1) When fresh fruit is sold for charitable purposes or to relief agencies;
- (2) When fresh fruit is sold on contract to departments of the government or governmental institutions;
- (3) When fresh fruit is sold by any officer acting under the order or direction of any court. [1965 c 61 § 7.]

**15.21.900 Chapter cumulative.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 c 61 § 8.]

**15.21.910 Short title.** This chapter may be cited as the Washington fresh fruit sales limitation act. [1965 c 61 § 9.]

**15.21.920 Severability—1965 c 61.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 61 § 10.]

### Chapter 15.24

#### APPLE ADVERTISING COMMISSION

##### Sections

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*Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 30.04.370.*

**15.24.010 Definitions.** As used in this chapter:

- (1) "Commission" means the Washington state apple advertising commission;
- (2) "Ship" means to load apples into a conveyance for transport, except apples being moved from the orchard where grown to a packing house or warehouse within the immediate area of production;
- (3) "Handler" means any person who ships or initiates a shipping operation, whether for himself or for another;
- (4) "Dealer" means any person who handles, ships, buys, or sells apples, or who acts as sales or purchasing agent, broker, or factor of apples;
- (5) "Processor" and "processing plant" means every person to whom and every place to which apples are delivered for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article;
- (6) "Processing apples" means all apples delivered to a processing plant for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article;
- (7) "Fresh apples" means all apples other than processing apples;
- (8) "Director" means the director of the department of agriculture or his duly authorized representative;
- (9) "District No. 1" includes the counties of Chelan, Okanogan, and Douglas;
- (10) "District No. 2" includes the counties of Kittitas, Yakima, Benton, and Franklin;
- (11) "District No. 3" includes all counties in the state not included in the first and second districts; and
- (12) "Executive officer" includes, but is not limited to, the principal management executive, sales manager, general manager, or other executive employee of similar responsibility and authority. [1967 c 240 § 22; 1963 c 145 § 1; 1961 c 11 § 15.24.010. Prior: 1937 c 195 § 2; RRS § 2874-2.]

**15.24.020 Commission created—Qualifications of members.** There is hereby created a Washington state apple advertising commission to be thus known and designated. The commission shall be composed of nine practical apple producers and four practical apple dealers. The director shall be an ex officio member of the commission without vote.

The nine producer members shall be citizens and residents of this state, over the age of twenty-five years, each of whom, either individually or as an executive officer of a corporation, firm or partnership, is and has been actually engaged in growing and producing apples within the state of Washington for a period of five years, and has during that period derived a substantial portion of his income therefrom: *Provided*, That he may own and operate an apple warehouse and pack and store apples grown by others, without being disqualified, so long as a substantial quantity of the apples handled in such warehouse are grown by him; and he may sell apples grown by himself and others so long as he does not sell a larger quantity of apples grown by others than those grown by himself. The four dealer

members shall be persons who, either individually or as executive officers of a corporation, firm, partnership, association, or cooperative organization, are and have been actively engaged as dealers in apples within the state of Washington for a period of five years, and are citizens and residents of this state. The qualifications of members of the commission as herein set forth must continue during their term of office. [1967 c 240 § 23; 1963 c 145 § 2; 1961 c 11 § 15.24.020. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

**15.24.030 Members—Election—Terms of office—District subdivisions—Meetings of commission.** Thirteen persons with the qualifications stated in RCW 15.24.020 as amended in section 23, chapter 240, Laws of 1967 shall be elected members of said commission. Four of the grower members, being positions one, two, three and four, shall be from district No. 1, at least one of whom shall be a resident of and engaged in growing and producing apples in Okanogan county; four of the grower members, being positions five, six, seven and eight, from district No. 2; and one grower member, being position nine from district No. 3. Two of the dealer members, being positions ten and eleven, shall be from district No. 1; and two of the dealer members, being positions twelve and thirteen, shall be from district No. 2.

The commission shall have authority in its discretion to establish by regulation one or more subdivisions of district No. 1 and one or more subdivisions of district No. 2; provided that each of the same includes a substantial apple producing district or districts, and provided the same does not result in an unfair or unequitable voting situation or an unfair or unequitable representation of apple growers on said commission. In such event each of said subdivisions shall be entitled to be represented by one of the said grower members of the commission, who shall be elected by vote of the qualified apple growers in said subdivision of said district, and who shall be a resident of and engaged in growing and producing apples in said subdivision.

The regular term of office of the members of the commission shall be three years from March 1 following their election and until their successors are elected and qualified. The commission shall hold its annual meeting during the month of March each year for the purpose of electing officers and the transaction of other business and shall hold such other meetings during the year as it shall determine. [1967 c 240 § 24; 1963 c 145 § 3; 1961 c 11 § 15.24.030. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

**15.24.040 Members—Nominations—Method of election.** The director shall call a meeting of apple growers in each of the three districts and meetings of apple dealers in district No. 1 and district No. 2 for the purpose of nominating their respective members of the commission, when a term is about to expire, or when a vacancy exists, except as provided in RCW 15.24.050, as amended, at times and places to be fixed by the commission. Said meetings shall be held not later than

February 15th of each year and insofar as practicable, the said meetings of the growers shall be held at the same time and place as the annual state and district meetings of the Washington state horticultural association and its affiliated clubs, but not while the same are in actual session. Public notice of such meetings shall be given by the commission in such manner as it may determine: *Provided*, That nonreceipt of the notice by any interested person shall not invalidate the proceedings. Any qualified person may be nominated orally for such positions at the said respective meetings. Nominations may also be made within five days after any such meeting by written petition filed in the Wenatchee office of the commission, signed by not less than five apple growers or dealers, as the case may be, residing within the district or within the subdivision if the nomination is made from a subdivision.

The members of the commission shall be elected by secret mail ballot under the supervision of the director: *Provided*, That in any case where there is but one nomination for a position, a secret mail ballot shall not be conducted or required and the director shall certify the candidate to be elected. Grower members of the commission shall be elected by a majority of the votes cast by the apple growers in the respective districts or subdivisions thereof, as the case may be, each grower who operates a commercial producing apple orchard, whether an individual proprietor, partnership, joint venture, or corporation, being entitled to one vote. As to bona fide leased or rented orchards, only the lessee-operator, if otherwise qualified, shall be entitled to vote. An individual commercial orchard operator, if otherwise qualified, shall be entitled to vote as such, even though he is also a member of a partnership or corporation which votes for other apple acreage. Dealer members of the commission shall be elected by a majority of the votes cast by the apple dealers in the respective districts, each dealer being entitled to one vote. If a nominee does not receive a majority of the votes on the first ballot, a runoff election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes. [1967 c 240 § 25; 1963 c 145 § 4; 1961 c 11 § 15.24.040. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

**15.24.050 Vacancies—Quorum—Compensation.** In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position until the next annual meeting shall be filled by vote of the remaining members of the commission. At such annual meeting a commissioner shall be elected to fill the balance of the unexpired term.

A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of the duties of said commission.

No member of the commission shall receive any salary or other compensation, but each member shall receive a sum to be determined by the commission but not more than twenty dollars per day for each day spent in actual attendance on or traveling to and from meetings of the commission, or on special assignment



for the commission, together with actual expenses incurred in carrying out the provisions of this chapter. [1967 c 240 § 26; 1961 c 11 § 15.24.050. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

**15.24.060 Commission records as evidence.** Copies of the proceedings, records and acts of the commission, when certified by the secretary and authenticated by the corporate seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein. [1961 c 11 § 15.24.060. Prior: 1937 c 195 § 4, part; RRS § 2874-4, part.]

**15.24.070 Powers and duties.** The Washington state apple advertising commission is hereby declared and created a corporate body. The powers and duties of the commission shall include the following:

(1) To elect a chairman and such other officers as it deems advisable; and to adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers hereunder, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ and at its pleasure discharge a manager, secretary, agents, attorneys, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(5) To investigate and prosecute violations hereof;

(6) To conduct scientific research to develop and discover the health, food, therapeutic, and dietetic value of apples and products thereof;

(7) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To sue and be sued, adopt a corporate seal, and have all of the powers of a corporation. [1963 c 145 § 5; 1961 c 11 § 15.24.070. Prior: (i) 1937 c 195 § 8; RRS § 2874-8. (ii) 1937 c 195 § 5; RRS § 2874-5. (iii) 1937 c 195 § 4, part; RRS § 2874-4, part.]

**15.24.080 Research, advertising, and educational campaign.** The commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign as continuous as the crop, sales and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of the markets and extent to which public convenience and necessity require research and advertising to be conducted. [1961 c 11 § 15.24.080. Prior: 1937 c 195 § 13, part; RRS § 2874-13, part.]

**15.24.085 Promotional printing not restricted by public printer laws.** The restrictive provisions of chapter 43.78 shall not apply to promotional printing and literature for the Washington state apple advertising commission, the Washington state fruit commission, or the Washington state dairy products commission. [1961 c 11 § 15.24.085. Prior: 1953 c 222 § 1.]

**15.24.086 Promotional printing contracts—Contractual conditions of employment.** All such printing contracts provided for in this section and RCW 15.24.085 shall be executed and performed under conditions of employment which shall substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the industrial welfare committee regarding conditions of employment, hours of labor, and minimum wages, and the violation of such provision of any contract shall be ground for cancellation thereof. [1973 1st ex.s. c 154 § 20; 1961 c 11 § 15.24.086. Prior: 1953 c 222 § 2.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**15.24.090 Report to director—Increased assessments.** If it appears from investigation by the commission that the revenue from the assessment levied on fresh apples hereunder is inadequate to accomplish the purposes of this chapter the commission shall adopt a resolution setting forth the necessities of the industry, extent and probable cost of the required research, market promotion and advertising, extent of public convenience, interest and necessity, and probable revenue from the assessment levied. It shall thereupon increase the assessment to such sum as shall be determined by the commission to be necessary for such purposes based upon a rate per one hundred pounds of apples, gross billing weight, shipped in bulk, container or any style of package; but no increase shall be made prior to adoption of said resolution. An increase shall become effective sixty days after such resolution is adopted: *Provided*, That no increase in such assessment shall become effective unless the same shall be first referred by the commission to a referendum mail ballot by the apple growers of this state conducted under the supervision of the director and be approved by a majority of such growers voting thereon and also be approved by voting growers who operate more than fifty percent of the acreage voted in the same election: *Provided, further*, That after such mail ballot, if the same be favorable to such increase, the commission shall nevertheless exercise its independent judgment and discretion as to whether or not to approve such increase: *And provided further*, That in any event such increase shall not amount to more than two cents per one hundred pounds of apples, gross billing weight, in any one year. [1967 c 240 § 27; 1963 c 145 § 6; 1961 c 11 § 15.24.090. Prior: 1953 c 43 § 1; 1937 c 195 § 13, part; RRS § 2874-13, part.]

**15.24.100 Assessments levied.** There is hereby levied upon all fresh apples grown annually in this state, and all apples packed as Washington apples, an assessment

of twelve cents on each one hundred pounds gross billing weight, plus such annual increases thereof as are imposed pursuant to the provisions of RCW 15.24.090. All moneys collected hereunder shall be expended to effectuate the purpose and objects of this chapter. [1967 c 240 § 28; 1963 c 145 § 7; 1961 c 11 § 15.24.100. Prior: 1937 c 195 § 9; RRS § 2874-9.]

**15.24.110 Collection—Due date—Stamps.** The assessments on fresh apples shall be paid, or provision made therefor satisfactory to the commission, prior to shipment, and no fresh apples shall be carried, transported, or shipped by any person or by any carrier, railroad, truck, boat, or other conveyance until the assessment has been paid or provision made therefor satisfactory to the commission.

The commission shall by rule or regulation prescribe the method of collection, and for that purpose may require stamps to be known as "apple advertising stamps" to be purchased from the commission and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. [1967 c 240 § 29; 1961 c 11 § 15.24.110. Prior: 1937 c 195 § 12; RRS § 2874-12.]

**15.24.120 Records kept by dealers, handlers, processors.** Each dealer, handler, and processor shall keep a complete and accurate record of all apples handled, shipped, or processed by him. This record shall be in such form and contain such information as the commission may by rule or regulation prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents. [1961 c 11 § 15.24.120. Prior: 1937 c 195 § 10; RRS § 2874-10.]

**15.24.130 Returns rendered by dealers, handlers, processors.** Each dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of apples handled, shipped, or processed by him during the period prescribed by the commission. The return shall contain such further information as the commission may require. [1961 c 11 § 15.24.130. Prior: 1937 c 195 § 11; RRS § 2874-11.]

**15.24.140 Right to inspect.** The commission may inspect the premises and records of any carrier, handler, dealer, or processor for the purpose of enforcing this chapter and the collection of the excise tax. [1961 c 11 § 15.24.140. Prior: 1937 c 195 § 19; RRS § 2874-19.]

**15.24.150 Treasurer—Bond—Duties—Funds.** The commission shall appoint a treasurer who shall file with it a fidelity bond executed by a surety company authorized to do business in this state, in favor of the commission and the state, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his duties and strict accounting of all funds of the commission.

All money received by the commission, or any other state official from the assessment herein levied, shall be paid to the treasurer, deposited in such banks as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01-.050 shall apply to money collected under this chapter. [1961 c 11 § 15.24.150. Prior: 1937 c 195 § 6; RRS § 2874-6.]

**15.24.160 Promotional plans—Cooperation of commission.** The commission may employ, designate as agent, act in concert with, and enter into contracts with any person, council, or commission for the purpose of promoting the general welfare of the apple industry and particularly for the purpose of assisting in the sale and distribution of apples in domestic or foreign commerce, and expend its funds or such portion thereof as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of apples in domestic or foreign commerce. For such purposes it may employ and pay for legal counsel and contract and pay for other professional services. [1961 c 11 § 15.24.160. Prior: 1947 c 280 § 3; Rem. Supp. 1947 § 2909-3.]

**15.24.170 Rules and regulations—Filing—Publication.** Rules, regulations, and orders made by the commission shall be filed with the director and published in a legal newspaper in the cities of Wenatchee and Yakima within five days after being made, and shall become effective five days after filing and publication. [1961 c 11 § 15.24.170. Prior: 1937 c 195 § 18; RRS § 2874-18.]

**Effective date of rules and regulations:** RCW 34.04.040.

**15.24.180 Enforcement.** All county and state law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.24.180. Prior: 1937 c 195 § 16; RRS § 2874-16.]

**15.24.190 Nonliability of state, members, employees.** The state shall not be liable for the acts of the commission or on its contracts. No member of the commission or any employee or agent thereof shall be liable on its contracts. All liabilities incurred by the commission shall be payable only from the funds collected hereunder. [1961 c 11 § 15.24.190. Prior: 1937 c 195 § 7; RRS § 2874-7.]

**15.24.200 Penalties.** Any person who violates or aids in the violation of any provision of this chapter shall be guilty of a gross misdemeanor, and any person who violates or aids in the violation of any rule or regulation of the commission shall be guilty of a misdemeanor. [1961 c 11 § 15.24.200. Prior: 1937 c 195 § 14; RRS § 2874-14.]

**15.24.210 Prosecutions.** Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in

which the violation was committed, or in which the defendant or any defendant has his principal place of business.

The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter and the rules and regulations of the commission issued hereunder, and to prevent and restrain violations thereof. [1961 c 11 § 15.24.210. Prior: 1937 c 195 § 15; RRS § 2874-15.]

**15.24.900 Purpose of chapter.** This chapter is passed:

(1) In the exercise of the police power of the state to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the apple industry of the state;

(2) Because the apple crop grown in Washington comprises one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(3) Because it is necessary and expedient to enhance the reputation of Washington apples in domestic and foreign markets;

(4) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington apples, and to spread that knowledge throughout the world in order to increase the consumption of Washington apples;

(5) Because Washington grown apples are handicapped by high freight rates in competition with eastern and foreign grown apples in the markets of the world, and this disadvantage can only be overcome by education and advertising;

(6) Because the stabilizing of the apple industry, the enlarging of its markets, and the increasing of the consumption of apples are necessary to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment within the state, and increase wages for agricultural labor;

(7) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only apples of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the producer therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the producer will be reduced to the minimum absolutely necessary;

(8) To protect the general public by educating it in reference to the various varieties and grades of Washington apples, the time to use and consume each variety, and the uses to which each variety should be put. [1961 c 11 § 15.24.900. Prior: 1937 c 195 § 1; RRS § 2874-1.]

**15.24.910 Liberal construction.** This chapter shall be liberally construed. [1961 c 11 § 15.24.910. Prior: 1937 c 195 § 17; RRS § 2874-17.]

**15.24.920 Severability—1967 c 240.** See note following RCW 43.23.010

**Chapter 15.26  
TREE FRUIT RESEARCH ACT**

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**15.26.010 Short title.** This chapter shall be known and cited as the "tree fruit research act." [1969 c 129 § 1.]

**15.26.020 Purpose.** The purpose of this chapter is for the creation of a commission which shall promote and carry on research which will or may benefit the planting, production, harvesting, handling, processing or shipment of tree fruit of this state, which shall collect assessments on tree fruit in this state and which shall coordinate its research efforts with those of other state, federal, or private agencies doing similar research. [1969 c 129 § 2.]

**15.26.030 Definitions.** As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or his duly authorized representative.

(3) "Person" means any natural persons, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(4) "Producer" means any person who owns or is engaged in the business of commercially producing tree fruit or has orchard plantings intended for commercial tree fruit production. [1969 c 129 § 3.]

**15.26.040 Tree fruit research commission created—Membership.** There is hereby created the Washington tree fruit research commission, to be thus known and designated. The commission shall be composed of nine members. Three members to be appointed by the Washington state fruit commission, five members to be appointed by the apple advertising commission, and one member representing the winter pear industry to be appointed by the director. The director or his duly authorized representative shall be ex officio member with a vote, to represent all assessed commodities. The appointed members of the commission shall serve at the will of their respective appointers even though appointed for specific terms as set forth in RCW 15.26.070. [1969 c 129 § 4.]

**15.26.050 Qualifications of members.** Nine members of the commission shall be producers who are citizens and residents of this state. Each producer member shall be over the age of twenty-five years and have been actively engaged in growing tree fruits in this state and deriving a substantial portion of his income therefrom, or having a substantial amount of orchard acreage devoted to tree fruit production or as an owner, lessee, partner or an employee or officer of a firm engaged in the production of tree fruit whose responsibility to such firm shall be primarily in the production of tree fruit. Such employee or officer of such firm shall be actually engaged in such duties relating to the production of tree fruit with such firm or any other such firm for a period of at least five years. The qualifications of the members of the commission set forth in this section shall continue during their term of office. [1969 c 129 § 5.]

**15.26.060 Appointment of members.** The apple advertising commission shall appoint producer members to positions one through five on the commission. The Washington state fruit commission shall appoint producer members to positions six through eight on the commission. The director shall appoint a producer who derives a substantial portion of his income from the production of winter pears. [1969 c 129 § 6.]

**15.26.070 Terms of members.** The terms of the members of commission shall be staggered and each shall serve for a term of three years and until their successor has been appointed and qualified: *Provided*, That the first appointments to the commission beginning July 30, 1969, shall be for the following terms:

- (1) Positions one, four, and seven, one year.
- (2) Positions two, five, and eight, two years.
- (3) Positions three, six, and nine, three years. [1969 c 129 § 7.]

**15.26.080 Vacancies.** In the event a commission member resigns, is disqualified, or vacates his position on the commission for any other reason, the appointing

agency that originally appointed such member shall within sixty days appoint a new member to fill the term of the vacated member. [1969 c 129 § 8.]

**15.26.090 Quorum.** A majority of the members of the commission shall constitute a quorum for the transaction of all business and carrying out the duties of the commission: *Provided*, That on all fiscal matters, approval for passage must be by at least two-thirds majority of the said quorum. [1969 c 129 § 9.]

**15.26.100 Compensation—Per diem—Expenses.** No member of the commission shall receive any salary or other compensation in the performance of his duties as a commission member, except a per diem payment to be determined by the commission not to exceed twenty dollars per day for each day spent in actual attendance at commission meetings, or on traveling to and from meetings of the commission, or on special assignments for the commission, together with actual expenses incurred in carrying out the provisions of this chapter. [1969 c 129 § 10.]

**15.26.110 Powers of commission.** The powers of the commission shall include the following:

- (1) To elect a chairman, treasurer, and such other officers as it deems advisable;
- (2) To adopt any rules and regulations necessary to carry out the purposes and provisions of this chapter, in conformance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as enacted or hereafter amended;
- (3) To administer and carry out the provisions of this chapter and do all those things necessary to carry out its purposes;
- (4) To employ and at its pleasure discharge a manager, secretary, agents, and employees as it deems necessary, and prescribe their duties and fix their compensation;
- (5) To own, lease or contract for any real or personal property necessary to carry out the purposes of this chapter, and transfer and convey the same;
- (6) To establish offices and incur expenses and enter into contracts and to create such liabilities as may be reasonable for administration and enforcement of this chapter;
- (7) Make necessary disbursements for the operation of the commission in carrying out the purposes and provisions of this chapter;
- (8) To employ, subject to the approval of the attorney general, attorneys necessary, and to maintain in its own name any and all legal actions, including actions for injunction, mandatory injunctions, or civil recovery, or proceedings before administrative tribunals or other government authorities necessary to carry out the purpose of this chapter;
- (9) To carry on any research which will or may benefit the planting, production, harvesting, handling, processing, or shipment of any tree fruit subject to the provisions of this chapter. To contract with any person, private or public, public agency, federal, state or local, or enter into agreements with other states or federal

agencies, to carry on such research jointly or enter into joint contracts with such states or federal agencies or other recognized private or public agencies, to carry on desired research provided for in this chapter;

(10) To appoint annually, ex officio commission members without a vote who are experts in research whether public or private in any area concerning or related to tree fruit to serve at the pleasure of the commission;

(11) Such other powers and duties that are necessary to carry out the purpose of this chapter. [1969 c 129 § 11.]

**15.26.120 Assessments levied—Referendum.** There is hereby levied on all commercial tree fruit produced in this state or held out as being produced in this state for fresh or processing use, an assessment, initially not to exceed ten cents per ton on all such tree fruits, except that such assessment for apples for fresh shipment shall be at the rate of one-half cent per one hundred pounds gross billing weight. Such assessment on all such commercial tree fruit shall not become effective until approved by a majority of such commercial producers of tree fruit voting in a referendum conducted jointly by the apple advertising commission, Washington state fruit commission and the department. The respective commissions shall supply all known producers of tree fruits subject to their respective commissions with a ballot for the referendum and the department shall supply all known tree fruit producers not subject to either of the commissions with a ballot wherein all known producers may approve or disapprove such assessment. The commission may waive the payment of assessments by any class of producers of minimal amounts of tree fruit when the commission determines subsequent to a hearing that the cost of collecting and keeping records of such assessments is disproportionate to the return to the commission. [1969 c 129 § 12.]

**15.26.130 List of producers.** The apple advertising commission and the Washington state fruit commission shall supply the director with a list of known producers subject to paying assessments to the respective commissions. The director, in addition, shall at the commission's cost compile a list of known tree fruit producers producing fruit not subject to assessments of the apple advertising commission and the Washington state fruit commission but subject to assessments or becoming subject to assessments under the provisions of this chapter. In compiling such list the director shall publish notice to producers of such tree fruit, requiring them to file with the director a report giving the producer's name, mailing address and orchard location. The notice shall be published once a week for four consecutive weeks in weekly or daily newspapers of general circulation in the area or areas where such tree fruit is produced. All producer reports shall be filed with the director within twenty days from the date of last publication of notice or thirty days of mailing notice to producers of such tree fruit, whichever is later. The director

shall for the purpose of conducting any referendum affecting tree fruits subject to the provisions of this chapter keep such list up to date when conducting such referendum. Every person who becomes a producer after said list is compiled shall file with the director a similar report, giving his name, mailing address and orchard location. Such list shall be final and conclusive in conducting referendums and failure to notify a producer shall not be cause for the invalidation of any referendum. [1969 c 129 § 13.]

**15.26.140 Increase in assessments by referendum.** The producers of tree fruit subject to the provisions of this chapter may subsequent to approving initial assessment increase such assessment by referendum when approved by a majority of the producers voting. [1969 c 129 § 14.]

**15.26.150 Additional assessments for special projects.** The producers of any specific tree fruit subject to the provisions of this chapter may at any time by referendum conducted by the department and approved by a majority of the producers voting of such specific tree fruit establish an additional assessment on such specific tree fruit for special research projects of special interest to such specific tree fruit. [1969 c 129 § 15.]

**15.26.160 Suspension of assessments.** The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend for a period not exceeding one crop year at a time all or part of the assessments on tree fruit subject to the provisions of this chapter. [1969 c 129 § 16.]

**15.26.170 Payment of assessments required before purchase, receipt or shipment of fruit.** Such assessments will be due from the producers. No person shall purchase, or receive for sale, or shipment out of state any tree fruits subject to the provisions of this chapter until he has received proof that the assessment due and payable the commission has been paid. [1969 c 129 § 17.]

**15.26.180 Records of persons receiving fruit.** Any person receiving commercial tree fruits from any producer thereof or any producer of tree fruit who prepared or processed his own tree fruit for sale, or shipment for sale shall keep complete and accurate records of all such tree fruit. Such records shall meet the requirements of rules or regulations prescribed by the commission and shall be kept for two years subject to inspection by duly authorized representatives of the commission. [1969 c 129 § 18.]

**15.26.190 Return of dealers, handlers, and processors—Filing—Contents.** Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of tree fruit, subject to the provisions of this chapter, handled, shipped, or processed by him during the period or periods of time prescribed by the commission. Such return

shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [1969 c 129 § 19.]

**15.26.200 Assessments—When due and payable—Collection.** Such assessments on tree fruits shall be due and payable by the producer thereof by the end of the next business day that such tree fruits are sold or shipped for sale unless such time is extended as provided for in RCW 15.26.210 by rule or regulation of the commission. The commission may by rule or regulation provide that such assessments shall be collected from the producer and remitted by the person purchasing, or receiving such tree fruit for sale, processing, or shipment anywhere. [1969 c 129 § 20.]

**15.26.210 Assessments—Constitute personal debt.** Any due and payable assessments herein levied shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable as provided for in RCW 15.26.200, unless the commission by rules or regulations provides for payment to be made not later than thirty days after the time set forth in RCW 15.26.200: *Provided*, That such extension of time shall not apply to any person who is in arrears in his payments to the commission. [1969 c 129 § 21.]

**15.26.220 Assessments—Failure to pay—Collection.** In the event any person fails to pay the full amount of such assessment or such other sum on or before the due date, the commission may add to such unpaid assessment or sum an amount not more than ten percent but not less than one dollar of the same to defray the cost of enforcing the collection of such assessment, together with interest on the unpaid balance of one percent per month commencing the first month following the month in which payment was due. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the interest and the above specified ten percent thereon, and such reasonable attorneys' fees as may be allowed by the court, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1969 c 129 § 22.]

**15.26.230 Disposition of moneys collected—Treasurer's bond.** All money collected under the authority of this chapter shall be paid to the treasurer of the commission, and be deposited by him in banks designated by the commission, and disbursed on the order of the commission. The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in a sum to be fixed by the commission, but not less than twenty-five thousand dollars, and conditioned upon his faithful performance of his duties and his strict accounting of all funds of the commission. RCW 43.01.050 shall not

apply to money collected under this chapter. [1969 c 129 § 23.]

**15.26.240 Nonliability of state, members, employees.** Obligations incurred by the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or acts of the commission shall exist against either the state of Washington, or against any member, officer, employee, or agent of the commission in his individual capacity. The members of the commission including employees of the commission, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes or other acts, either of commission or omission as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall not be several and joint and no member shall be liable for the default of any other member. [1969 c 129 § 24.]

**15.26.250 Collection of assessments for commission by apple advertising commission and state fruit commission.** The apple advertising commission and Washington state fruit commission in order to avoid unnecessary duplication of costs and efforts in collecting assessments for tree fruits at the time said commissions collect assessments due under the provisions of their acts may also collect the assessment due the commission on such tree fruit. Such assessments on winter pears may be collected by the Washington state fruit commission or in a manner prescribed by the commission. Assessments collected for the commission by the Washington state apple advertising commission and the Washington state fruit commission shall be forwarded to the commissions expeditiously. No fee shall be charged the commission for the collection of assessments because the research conducted by the commission shall be of direct benefit to all commercial growers of tree fruits in the state of Washington: *Provided*, That the commission shall reimburse at actual cost to the department or the Washington state fruit commission or apple commission any assessment collected for the commission by such agencies for any tree fruit subject to the provisions of this chapter, but not subject to pay assessments to the Washington state fruit commission or the apple advertising commission. [1969 c 129 § 25.]

**15.26.260 Legal costs and expenses to be borne by commission.** All legal costs and expenses that may be incurred in the collection of delinquent accounts owed this commission shall be borne by the commission; except as provided for otherwise in RCW 15.26.220. [1969 c 129 § 26.]

**15.26.270 Copies of commission's proceedings, records, acts as evidence.** Copies of the commission's proceedings, records, and acts when certified by the secretary and authenticated by the commission's seal

shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1969 c 129 § 27.]

**15.26.280 Moneys collected retained by commission.** All moneys collected by the commission under the provisions of this chapter shall be retained by the commission for the purpose of carrying out the purpose and provisions of this chapter. The commission may accept and retain any moneys from private persons or private or public agencies to carry out the purposes and provisions of this chapter. [1969 c 129 § 28.]

**15.26.290 Contracts with public or private agencies to carry out chapter.** The commission may enter into agreement or contract with any private person or any private or public agency whether federal, state or local in order to carry out the purposes and provisions of this chapter. [1969 c 129 § 29.]

**15.26.300 Violations—Penalty.** Any person violating any provision of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 c 129 § 30.]

**15.26.900 Chapter cumulative.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 c 129 § 32.]

**15.26.910 Severability—1969 c 129.** If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 c 129 § 33.]

## Chapter 15.28 SOFT TREE FRUITS

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### 15.28.010 Definitions. As used in this chapter:

(1) "Commission" means the Washington state fruit commission.

(2) "Shipment" or "shipped" includes loading in a conveyance to be transported to market for resale, and includes delivery to a processor or processing plant, but does not include movement from the orchard where grown to a packing or storage plant within this state for fresh shipment;

(3) "Handler" means any person who ships or initiates the shipping operation, whether as owner, agent or otherwise;

(4) "Dealer" means any person who handles, ships, buys, or sells soft tree fruits other than those grown by him, or who acts as sales or purchasing agent, broker, or factor of soft tree fruits;

(5) "Processor" or "processing plant" includes every person or plant receiving soft tree fruits for the purpose of drying, dehydrating, canning, pressing, powdering, extracting, cooking, quick-freezing, brining, or for use in manufacturing a product;

(6) "Soft tree fruits" mean Bartlett pears and all varieties of cherries, apricots, prunes, plums and peaches. "Bartlett pears" means and includes all standard Bartlett pears and all varieties, strains, subvarieties, and sport varieties of Bartlett pears including Red Bartlett pears, that are harvested and utilized at approximately the same time and approximately in the same manner.

(7) "Commercial fruit" or "commercial grade" means soft tree fruits meeting the requirements of any established or recognized fresh fruit or processing grade. Fruit bought or sold on orchard run basis and not subject to cull weighback shall be deemed to be "commercial fruit."

(8) "Cull grade" means fruit of lower than commercial grade except when such fruit included with commercial fruit does not exceed the permissible tolerance permitted in a commercial grade;

(9) "Producer" means any person who is a grower of any soft tree fruit;

(10) "District No. 1" or "first district" includes the counties of Chelan, Okanogan, Grant, Douglas, Ferry, Stevens, Pend Oreille, Spokane and Lincoln;

(11) "District No. 2" or "second district" includes the counties of Kittitas, Yakima, and Benton county north of the Yakima river;



(12) "District No. 3" or "third district" comprises all of the state not included in the first and second districts. [1973 c 11 § 1; 1963 c 51 § 1; 1961 c 11 § 15.28.010. Prior: 1955 c 47 § 1; 1947 c 73 § 1; Rem. Supp. 1947 § 2909-10.]

**15.28.020 Commission created—Members, voting and ex officio—Quorum.** A corporation to be known as the Washington state fruit commission is hereby created, composed of sixteen voting members, to wit: Ten producers, four dealers, and two processors, who shall be elected and qualified as herein provided. The director of agriculture, hereinafter referred to as the director, or his duly authorized representative, shall be an ex officio member without a vote.

A majority of the voting members shall constitute a quorum for the transaction of any business. [1967 c 191 § 1; 1961 c 11 § 15.28.020. Prior: (i) 1947 c 73 § 2; Rem. Supp. 1947 § 2901-11. (ii) 1947 c 73 § 9; Rem. Supp. 1947 § 2909-18. (iii) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

**Effective date—1967 c 191:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That section 5 of this 1967 amendatory act shall not take effect until July 1, 1968." [1967 c 191 § 9.] Section 5 of chapter 191, Laws of 1967 is codified as RCW 15.28.090. The remaining sections of said chapter are codified as RCW 15.28.020 through 15.28.070.

**15.28.030 Qualifications of voting members.** All voting members must be citizens and residents of this state. Each producer member must be over the age of twenty-five years, and be, and for five years have been, actively engaged in growing soft tree fruits in this state, and deriving a substantial portion of his income therefrom, or have a substantial amount of orchard acreage devoted to soft tree fruit production as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of soft tree fruit. He cannot be engaged directly in business as a dealer. Each dealer member must be actively engaged, either individually or as an executive officer, employee or sales manager on a management level, or managing agent of an organization, as a dealer. Each processor member must be engaged, either individually or as an executive officer, employee on a management level, sales manager, or managing agent of an organization, as a processor. Only one dealer member may be in the employ of any one person or organization engaged in business as a dealer. Only one processor member may be in the employ of any one person or organization engaged in business as a processor. Said qualifications must continue throughout each member's term of office. [1967 c 191 § 2; 1961 c 11 § 15.28.030. Prior: 1947 c 73 § 3; Rem. Supp. 1947 § 2909-12.]

**15.28.040 Election of voting members—Positions.** Of the producer members, four shall be elected from the first district and occupy positions one, two, three and four; four shall be elected from the second district and occupy positions five, six, seven and eight, and two

shall be elected from the third district and occupy positions nine and ten.

Of the dealer members, two shall be elected from each of the first and second districts and respectively occupy positions eleven and twelve from the first district and positions thirteen and fourteen from the second district.

The processor members shall be elected from the state at large and occupy positions fifteen and sixteen. The dealer member position previously referred to as position twelve shall henceforth be position thirteen. The processor member position heretofore referred to as position fourteen shall cease to exist on March 21, 1967. The processor member position heretofore referred to as thirteen shall be known as position sixteen. [1967 c 191 § 3; 1961 c 11 § 15.28.040. Prior: 1947 c 73 § 4; Rem. Supp. 1947 § 2909-13.]

**15.28.050 Terms of office.** The regular term of office of the members of the commission shall be three years commencing on May 1, following the date of election and until their successors are elected and qualified, except, however, that the first term of dealer position twelve in the first district shall be for two years and expire May 1, 1969. [1967 c 191 § 4; 1961 c 11 § 15.28.050. Prior: 1947 c 73 § 5; Rem. Supp. 1947 § 2909-14.]

**15.28.055 Terms of present members.** Present members of the state fruit commission as provided for in RCW 15.28.020 shall serve until the first day of May of the year in which their terms would ordinarily expire and until their successors are elected and qualified. [1967 c 191 § 8.]

**15.28.060 Nominating meetings—Notice—Election—Ballots—Eligible voters.** The director shall call meetings at times and places concurred upon by the director and the commission for the purpose of nominating producer, dealer or processor members for election to the commission when such members' terms are about to expire. Notice of such meetings shall be given at least sixty days prior to the time the respective members' term is about to expire. The nominating meetings shall be held at least sixty days prior to the expiration of the respective members' term of office.

Notice shall be given by the commission by mail to all known persons having a right to vote for such respective nominee's election to the commission.

Further, the commission shall publish notice at least once in a newspaper of general circulation in the district where the nomination is to be held. Such a newspaper may be published daily or weekly. The failure of any person entitled to receive notice of such nominating meeting shall not invalidate such nominating meeting or the election of a member nominated at such meeting.

Any person qualified to serve on the commission may be nominated orally at said nomination meetings. Written nominations, signed by five persons qualified to vote for the said nominee, may be made for five days subsequent to said nomination meeting. Such written nominations shall be filed with the commission at its Yakima office.

Members of the commission shall be elected by a secret mail ballot, and such election shall be conducted under the supervision of the director, and the elected candidate shall become a member of the commission upon certification of the director that said elected candidate has satisfied the required qualifications for membership on the commission.

When only one nominee is nominated for any position on the commission, the director shall, if such nominee satisfies the requirements of the position for which he was nominated, certify the said nominee as to his qualifications and then it shall be deemed that said nominee has been duly elected. Nominees receiving a majority of the votes in an election shall be considered to have been elected and if more than one position is to be filled in a district or at large, the nominees respectively receiving the largest number of votes shall be deemed to have been elected to fill the vacancies from said districts or areas on the commission. Persons qualified to vote for members of the commission shall, except as otherwise provided by law or rule or regulation of the commission, vote only in the district in which their activities make them eligible to vote for a member of the commission.

A producer to be eligible to vote in an election for a producer member of the commission must be a commercial producer of soft tree fruits paying assessments to the commission.

When a legal entity acting as a producer, dealer, or processor is qualified to vote for a candidate in any district or area to serve in a specified position on the commission, such legal entity may cast only one vote for such candidate, regardless of the number of persons comprising such legal entity or stockholders owning stock therein. [1967 c 191 § 6; 1963 c 51 § 2; 1961 c 11 § 15.28.060. Prior: 1947 c 73 § 6; Rem. Supp. 1947 § 2909-15.]

**15.28.070 Rules and regulations—Establishment of subdistricts.** The commission shall have the authority, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act), for adopting rules and regulations, after public hearing, establishing one or more subdistricts in any one of the three districts. Such subdistricts shall include a substantial portion of the soft tree fruit producing area in the district in which they are formed.

The commission shall, when a subdistrict has been formed within one of the districts as in this section provided for, assign one of the districts' producer positions on the commission to said subdistrict. Such producer position may only be filled by a producer residing in such subdistrict, whether by election, apportionment, or appointment. [1967 c 191 § 7; 1961 c 11 § 15.28.070. Prior: 1947 c 73 § 7; Rem. Supp. 1947 § 2909-16.]

**15.28.080 Vacancies on commission—How filled.** In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position, until the next annual election meeting, shall be filled by vote of the remaining members of the commission. At such annual election a commissioner

shall be elected to fill the balance of the unexpired term. [1961 c 11 § 15.28.080. Prior: 1947 c 73 § 8; Rem. Supp. 1947 § 2909-17.]

**15.28.090 Compensation of members—Per diem and expenses.** No member of the commission shall receive any salary or other compensation but each member shall receive the sum of twenty dollars per day for each day spent in actual attendance on or in traveling to and from meetings of the commission or on special assignment for the commission, together with actual expenses incurred in carrying out the provisions of this chapter. [1967 c 191 § 5; 1961 c 11 § 15.28.090. Prior: 1947 c 73 § 10; Rem. Supp. 1947 § 2909-19.]

**Effective date:** The effective date of the 1967 amendment to this section is July 1, 1968, see note following RCW 15.28.020.

**15.28.100 Powers of commission.** The Washington state fruit commission is hereby declared and created a corporate body. The commission has power:

- (1) To exercise all of the powers of a corporation;
- (2) To elect a chairman and such other officers as it may deem advisable;
- (3) To adopt, amend or repeal, from time to time, necessary and proper rules, regulations and orders for the performance of its duties, which rules, regulations and orders shall have the force of laws when not inconsistent with existing laws;
- (4) To employ, and at its pleasure discharge, such attorneys, advertising manager, agents or agencies, clerks and employees, as it deems necessary and fix their compensation;
- (5) To establish offices, and incur such expenses, enter into such contracts, and create such liabilities, as it deems reasonably necessary for the proper administration of this chapter;
- (6) To accept contributions of, or match private, state or federal funds available for research, and make contributions to persons or state or federal agencies conducting such research;
- (7) To administer and enforce this chapter, and do and perform all acts and exercise all powers deemed reasonably necessary, proper or advisable to effectuate the purposes of this chapter, and to perpetuate and promote the general welfare of the soft tree fruit industry of this state;
- (8) To sue and be sued. [1961 c 11 § 15.28.100. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part. (ii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part. (iii) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909-26, part.]

**15.28.110 Duties of commission.** The commission's duties are:

- (1) To adopt a corporate seal;
- (2) To elect a secretary-manager, and a treasurer, and fix their compensation. The same person may be elected to both of said offices;
- (3) To establish classifications of soft tree fruits;
- (4) To conduct scientific research and develop the healthful, therapeutic and dietetic value of said fruits,

and promote the general welfare of the soft tree fruit industry of the state;

(5) To conduct a comprehensive advertising and educational campaign to effectuate the objects of this chapter;

(6) To increase the production, and develop and expand the markets, and improve the handling and quality of said fruits;

(7) To keep accurate accounts and records of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To investigate and prosecute violations hereof. [1961 c 11 § 15.28.110. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part. (ii) 1947 c 73 § 14; Rem. Supp. 1947 § 2909-23. (iii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part. (iv) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909-26, part.]

**15.28.120 Copies of records as evidence.** Copies of the commission's proceedings, records, and acts, when certified by the secretary and authenticated by the corporate seal, shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1961 c 11 § 15.28.120. Prior: 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

**15.28.130 State, personal, nonliability—Obligations limited by collections.** Neither the state, nor any member, agent, or employee of the commission, shall be liable for the acts of the commission, or upon its contracts.

All salaries, expenses, costs, obligations and liabilities of the commission, and claims arising from the administration of this chapter, shall be payable only from funds collected hereunder. [1961 c 11 § 15.28.130. Prior: 1947 c 73 § 16; Rem. Supp. 1947 § 2909-25.]

**15.28.140 District advisory and state commodity committees.** There shall be separate district advisory committees and separate state commodity committees for each of the following soft tree fruits, to wit: Bartlett pears, peaches, apricots, prunes and plums, and cherries. The growers, dealers, or processors of each of the soft tree fruits, at their respective annual district meetings may elect separate district advisory committees for each of the soft tree fruits grown, handled, or processed in their respective districts. The district advisory committee shall consist of five members comprising three growers, one dealer and one processor of the respective soft tree fruit groups. Each state commodity committee shall consist of two members from, and selected by, each district advisory committee for each soft fruit. [1961 c 11 § 15.28.140. Prior: 1947 c 73 § 11; Rem. Supp. 1947 § 2909-20.]

**15.28.150 Committee organization—Duties.** Each district advisory committee and each state commodity committee shall select one of its members as chairman. Meetings may be called by the chairman or by any two members of any committee by giving reasonable written notice of the meeting to each member of such committee. A majority of the members shall be necessary to

constitute a quorum. The district advisory committees and state commodity committees shall consult with and advise the commission on matters pertaining to the soft tree fruits which they respectively represent, and the commission shall give due consideration to their recommendations. Any grower, dealer, or processor, if qualified, may be a member of more than one committee. [1961 c 11 § 15.28.150. Prior: 1947 c 73 § 12; Rem. Supp. 1947 § 2909-21.]

**15.28.160 Annual assessment—Rate—Exception—Brined sweet cherries assessable.** An annual assessment is hereby levied upon all commercial soft tree fruits grown in this state of fifty cents per two thousand pounds (net weight) of said fruits, when shipped fresh or delivered to processors, whether in bulk, loose in containers, or packaged in any style of package, except, that all sales of five hundred pounds or less of such fruits sold by the producer direct to the consumer shall be exempt from said assessments. Sweet cherries which are brined are deemed to be commercial soft tree fruit and therefore assessable hereunder. [1963 c 51 § 3; 1961 c 11 § 15.28.160. Prior: 1947 c 73 § 18; Rem. Supp. 1947 § 2909-27.]

**15.28.170 Research and advertising—Power to increase assessment.** The commission shall investigate the needs of soft tree fruit producers, the condition of the markets, and extent to which the same require advertising and research. If the investigation shows that the revenue from the assessments levied is inadequate to accomplish the objects of this chapter, it shall report its findings to the director, showing the necessities of the industry, the probable cost of the required program, and the probable revenue from the existing levy. It may then increase the assessments to be levied to an amount not exceeding two dollars per each two thousand pounds (net weight) of such fruits so contained or packed. [1961 c 11 § 15.28.170. Prior: 1947 c 73 § 25; Rem. Supp. 1947 § 2909-34.]

**15.28.175 Promotional printing and literature—Contracts.** Promotional printing and literature not restricted by laws relating to public printer, see RCW 15.24.085. Conditions of employment, etc., in contracts, see RCW 15.24.086.

**15.28.180 Increase of assessment for a fruit or classification—Exemptions.** The same assessment shall be made for each soft tree fruit, except that if a two-thirds majority of the state commodity committee of any fruit recommends in writing the levy of an additional assessment on such fruit, or any classification thereof, for any year or years, the commission may levy such assessment for such year or years up to the maximum of two dollars for each two thousand pounds of any fruit except cherries or any classification thereof, as to which the assessment may be increased to a maximum of ten dollars for each two thousand pounds, and except pears covered by this chapter as now or hereafter amended, as to which the assessment may be increased to a maximum of three dollars for each two thousand pounds:

*Provided.* That no increase in such assessment on pears shall become effective unless the same shall be first referred by the commission to a referendum by the Bartlett pear growers of the state and be approved by a majority of such growers voting thereon. The method and procedure of conducting such referendum shall be determined by the commission. Any funds so raised shall be expended solely for the purposes provided in this chapter and solely for such fruit, or classification thereof.

The commission shall have the authority in its discretion to exempt in whole or in part from future assessments hereunder, during such period as the commission may prescribe, any of the said soft tree fruits or any particular strain or classification thereof. [1965 ex.s. c 43 § 1; 1963 c 51 § 4; 1961 c 11 § 15.28-.180. Prior: 1947 c 73 § 26; Rem. Supp. 1947 § 2909-35.]

**15.28.190 Deposit of funds—Treasurer's bond.** All money collected under the authority of this chapter shall be paid to the treasurer of the commission, deposited by him in banks designated by the commission, and disbursed on its order.

The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in the sum of fifty thousand dollars, and conditioned upon his faithful performance of his duties and his strict accounting of all funds of the commission.

None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter. [1961 c 11 § 15.28.190. Prior: 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part.]

**15.28.200 Use of funds—Contributions.** All moneys collected from such levy shall be expended exclusively to effectuate the purposes and objects of this chapter. They shall be generally expended on promotion and improvement of the various commodities approximately in the ratio that funds are derived from such commodities, after deducting suitable amounts for general overhead and basic general research, unless a majority of the functioning state commodity committees consent to a larger expenditure on behalf of any commodity or commodities. Any funds contributed to the commission by any special group or raised by an additional levy on any commodity or classification thereof, shall be expended only in connection with such commodity. [1961 c 11 § 15.28.200. Prior: 1947 c 73 § 19; Rem. Supp. 1947 § 2909-28.]

**15.28.210 Records kept—Preservation—Inspection of.** Every dealer, handler, and processor shall keep a complete and accurate record of all soft tree fruits handled, shipped, or processed by him. Such record shall be in simple form and contain such information as the commission shall by rule or regulation prescribe. The records shall be preserved by such handler, dealer, and processor for a period of two years and shall be offered and submitted for inspection at any reasonable

time upon written request of the commission or its duly authorized agents. [1961 c 11 § 15.28.210. Prior: 1947 c 73 § 20; Rem. Supp. 1947 § 2909-29.]

**15.28.220 Returns to commission.** Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of soft tree fruits handled, shipped, or processed by him during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [1961 c 11 § 15.28.220. Prior: 1947 c 73 § 21; Rem. Supp. 1947 § 2909-30.]

**15.28.230 Due date of assessments—Delinquent penalty.** All assessments levied and imposed by this chapter shall be due prior to shipment and shall become delinquent if not paid within thirty days after the time established for such payment according to regulations of the commission. A delinquent penalty shall be payable on any such delinquent assessment, calculated as interest on the principal amount due at the rate of ten percent per annum. Any delinquent penalty shall not be charged back against the grower unless he caused such delay in payment of the assessment due. [1961 c 11 § 15.28.230. Prior: 1955 c 47 § 2; 1947 c 73 § 22; Rem. Supp. 1947 § 2909-31.]

**15.28.240 Collection rules—Use of "stamps".** The commission shall by rule or regulation prescribe the method of collection, and for that purpose may require stamps to be known as "Washington state fruit commission stamps" to be purchased from the commission and fixed or attached to the container, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. Stamps shall be canceled immediately upon being so attached or fixed, and the date of cancellation shall be placed thereon. [1961 c 11 § 15.28.240. Prior: 1947 c 73 § 23; Rem. Supp. 1947 § 2909-32.]

**15.28.250 Failure to pay—Duty of dealer, processor.** Unless the assessment has been paid by the grower and evidence thereof submitted by him, the dealer, handler, or processor shall be responsible for the payment of all assessments hereunder on all soft tree fruits handled, shipped, or processed by him but he shall charge the same against the grower, who shall be primarily responsible for such payment. [1961 c 11 § 15.28.250. Prior: 1947 c 73 § 24; Rem. Supp. 1947 § 2909-33.]

**15.28.260 Publications by commission—Subscriptions.** If the commission publishes a bulletin or other publication, or a section in some established trade publication, for the dissemination of information to the soft tree fruit industry in this state, the first two dollars of any assessment paid annually by each grower, handler, dealer, and processor of such fruit shall be applied to

the payment of his subscription to such bulletin or publication. [1961 c 11 § 15.28.260. Prior: 1947 c 73 § 27; Rem. Supp. 1947 § 2909–36.]

**15.28.270 Violations—Penalty.** Every person shall be guilty of a misdemeanor who:

(1) Violates or aids in the violation of any provision of this chapter, or

(2) Violates or aids in the violation of any rule or regulation of the commission. [1961 c 11 § 15.28.270. Prior: 1947 c 73 § 28; Rem. Supp. 1947 § 2909–37.]

**15.28.280 Venue of actions—Jurisdiction of courts.** Any prosecution brought under this chapter may be instituted or brought in any county in the state in which the defendant or any of the defendants reside, or in which the violation was committed, or in which the defendant or any of the defendants has his principal place of business.

The several superior courts of the state are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof, or of any rule or regulation promulgated by the commission. [1961 c 11 § 15.28.280. Prior: 1947 c 73 § 29; Rem. Supp. 1947 § 2909–38.]

**15.28.290 Duty to enforce.** It shall be the duty of all state and county law enforcement officers and all employees and agents of the department to aid in the enforcement of this chapter. [1961 c 11 § 15.28.290. Prior: 1947 c 73 § 30; Rem. Supp. 1947 § 2909–39.]

**15.28.300 Publication of rules, regulations—Effective date.** Every rule, regulation, or order promulgated by the commission shall be filed with the director, and shall be published in a legal daily newspaper in each of the three districts. All such rules, regulations, or orders shall become effective fifteen days after both filing and publication. [1961 c 11 § 15.28.300. Prior: 1947 c 73 § 31; Rem. Supp. 1947 § 2909–40.]

**Effective date of rules and regulations:** See RCW 34.04.040.

**15.28.310 Authority to agents of commission to inspect.** Agents of the commission, upon specific written authorization signed by the chairman or secretary-manager thereof, shall have the right to inspect the premises, books, records, documents, and all other instruments of any carrier, railroad, truck, boat, grower, handler, dealer, and processor for the purpose of enforcing this chapter and collecting the assessments levied hereunder. [1961 c 11 § 15.28.310. Prior: 1947 c 73 § 32; Rem. Supp. 1947 § 2909–41.]

**15.28.900 Preamble.** This chapter is passed:

(1) In the exercise of the police power of the state to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the soft tree fruit industry of the state;

(2) Because the soft tree fruits grown in Washington collectively comprise one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crops and the expanding

and protection of the market for them is of public interest;

(3) Because it is necessary and expedient to enhance the reputation of Washington soft tree fruits in domestic and foreign markets;

(4) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington soft tree fruits, and to spread that knowledge throughout the world in order to increase the consumption of Washington soft tree fruits;

(5) Because Washington grown soft tree fruits are handicapped by high freight rates in competition with eastern and foreign grown soft tree fruits in the markets of the world, and this disadvantage can only be overcome by education and advertising;

(6) Because the stabilization of the soft tree fruits industry, enlargement of its markets, and the increase of the consumption of soft tree fruits are necessary to assure the payment of taxes to the state and its subdivisions, and to maintain employment and adequate wages for agricultural labor within the state;

(7) Because many new plantings of soft fruit trees are being made and substantially increased new plantings are expected in the near future as additional land comes under irrigation, and since the soft fruit trees mature quickly, it is conceivable that the industry may become unstabilized and demoralized by the excess production unless adequate outlets for the crops are provided, in advance of this anticipated production and it is essential that the program herein outlined be adopted for the purposes herein stated to aid in stabilizing the soft tree fruit industry;

(8) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only soft tree fruits of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the producer thereof, so that they can pay adequate wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the producer will be reduced to the minimum absolutely necessary; and to educate the wholesale and retail trade with reference to the advantages of establishing and maintaining markups that will result in increasing sales to the consumers with consequent benefits to the people of the state of Washington;

(9) To protect the general public by educating it in reference to the various varieties and grades of Washington soft tree fruits, the time to use and consume each variety, and the uses to which each variety should be put. [1961 c 11 § 15.28.900. Prior: 1947 c 73; No RRS.]

**15.28.910 Liberal construction.** This chapter shall be liberally construed. [1961 c 11 § 15.28.910. Prior: 1947 c 73 § 33, part; Rem. Supp. 1947 § 2909–42, part.]

**Chapter 15.30**  
**CONTROLLED ATMOSPHERE STORAGE OF**  
**FRUITS AND VEGETABLES**

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**15.30.010 Definitions.** For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society and association and every officer, agent or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Controlled atmosphere storage" means any storage warehouse consisting of one or more rooms, or one or more rooms in any one facility in which atmospheric gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of any fresh fruits or vegetables in order that, upon removal, they may be designated as having been exposed to controlled atmosphere. [1961 c 29 § 1.]

**15.30.020 Annual license required—Expiration date.** It shall be unlawful for any person to engage in the business of operating a controlled atmosphere storage warehouse or warehouses without first obtaining an annual license from the director. Such license shall expire on August 31st of any one year. [1961 c 29 § 2.]

**15.30.030 Application for license, contents—Issuance, prerequisites.** Application for a license to operate a controlled atmosphere warehouse shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(5) The storage capacity of each controlled atmosphere storage warehouse the applicant intends to operate by cubic capacity or volume.

(6) The kind of fruits or vegetables for which the applicant intends to provide controlled atmosphere storage.

(7) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required license fee. [1961 c 29 § 3.]

**15.30.040 Annual license fee.** The application for an annual license to engage in the business of operating a controlled atmosphere storage warehouse or warehouses shall be accompanied by an annual license fee of five dollars. [1961 c 29 § 4.]

**15.30.050 Enforcement—Rules authorized, procedure.** The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purposes. The adoption of rules shall be subject to the provisions of chapter 34.04 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 29 § 5.]

**15.30.060 Oxygen content and period to be maintained—Classification of fruits, vegetables as controlled atmosphere stored, time and temperature requirements.** The director shall adopt rules:

(1) Prescribing the maximum amount of oxygen that may be retained in a sealed controlled atmosphere storage warehouse: *Provided*, That such maximum amount of oxygen retained shall not exceed five percent when

apples are stored in such controlled atmosphere storage warehouse.

(2) Prescribing the period in which the oxygen content shall be reduced to the amount prescribed in subsection (1) of this section: *Provided*, That such period shall not exceed twenty days when apples are stored in such controlled atmosphere warehouse.

(3) The length of time and the degrees of temperature at which any fruits or vegetables shall be retained in controlled atmosphere storage, before they may be classified as having been stored in controlled atmosphere storage: *Provided*, That such period shall not be less than ninety days for apples. [1967 c 215 § 1; 1961 c 29 § 6.]

**15.30.070 License renewal date—Penalty for late renewal, exception.** If an application for renewal of the license provided for in RCW 15.30.020 is not filed prior to September 1st of any one year, a penalty of two dollars and fifty cents shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not engaged in the business of operating a controlled atmosphere storage warehouse subsequent to the expiration of his prior license. [1961 c 29 § 7.]

**15.30.080 Denial, suspension, revocation of license—Grounds—Hearing required.** The director is authorized to deny, suspend or revoke the license provided for in RCW 15.30.020 subsequent to a hearing, in any case in which he finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [1961 c 29 § 8.]

**15.30.090 Denial, suspension, revocation of license—Hearings subject to administrative procedure act.** All hearings for a denial, suspension or revocation of the license provided for in RCW 15.30.020 shall be subject to the provisions of chapter 34.04 RCW, concerning contested cases, as enacted or hereafter amended. [1961 c 29 § 9.]

**15.30.100 Subpoenas—Witnesses and fees.** The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents and records, anywhere in the state in any hearing affecting the authority or privilege granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [1961 c 29 § 10.]

**15.30.110 Issuance of warehouse number—Use of letters "CA"—Marking containers with letters and number.** The director when issuing a license to an applicant shall include a warehouse number which shall be preceded by the letters "CA". If the applicant in applying for a license includes a request for a specific warehouse number, the director shall issue such number to the applicant if such number has not been issued to a

prior applicant. The letters "CA" and the number issued as provided in this section shall be marked in a manner provided by the director on all containers in which fruits or vegetables subject to the provisions of this chapter are placed or packed. [1961 c 29 § 11.]

**15.30.120 Licensee to make daily determination of air components—Record, form, contents.** The licensee shall make air component determinations as to the percentage of carbon dioxide, oxygen and temperature at least once each day. A record of such determinations shall be kept on a form prescribed by the director for a period of two years and shall include the following:

(1) The name and address of the licensee.

(2) The number of the warehouse and the storage capacity of the warehouse.

(3) The date of sealing of the warehouse.

(4) Date of opening of the warehouse.

(5) A daily record of the date and time of the tests, including the percentage of carbon dioxide, percentage of oxygen and the temperature. [1961 c 29 § 12.]

**15.30.130 Identity of fruit and vegetables to be maintained by CA number and inspection number to retail market.** The identity of any fruits or vegetables represented as having been stored in a room or warehouse subject to the provisions of this chapter shall be maintained, by the CA number issued to the licensee in whose warehouse such fruits and vegetables were stored and the state lot inspection number issued by the director for such fruits or vegetables, from the time it leaves such warehouse through the various channels of trade and transportation to the retailer. [1961 c 29 § 13.]

**15.30.140 Maturity and condition standards may be higher than for fruit and vegetables not subject to chapter.** The director may by rule establish condition and maturity standards for fruits or vegetables subject to the provisions of this chapter which may be higher than maturity and condition standards established for similar grades or classifications of such fruits or vegetables which are not subject to the provisions of this chapter. [1961 c 29 § 14.]

**15.30.150 Minimum condition and maturity standards for apples.** Minimum condition and maturity standards for apples subject to the provisions of this chapter shall be the U.S. condition and maturity standards for export as provided in 7 Code of Federal Regulations 51.317 on February 21, 1961: *Provided*, That the director may adopt any subsequent amendment to such U.S. condition and maturity standards for export prescribed by the secretary of agriculture of the United States. [1961 c 29 § 15.]

**15.30.160 Inspection, certification prior to using "CA" or similar designation—Eradication required, when.** No person in this state shall place or stamp the letters "CA" or a similar designation in conjunction with a number or numbers upon any container or sub-container of any fruits or vegetables, unless the director has inspected such fruits or vegetables and issued a



state lot number for such fruits or vegetables in conjunction with a certificate stating their quality and condition, that they were stored in a warehouse licensed under the provisions of this chapter and that they meet all other requirements of this chapter or rules adopted hereunder: *Provided*, That if such fruits or vegetables are not allowed to enter the channels of commerce within two weeks of such inspection or a subsequent similar inspection by the director the letters "CA" and the state lot number shall be eradicated by the licensee. [1961 c 29 § 16.]

**15.30.170 Inspection, certification may be requested by financially interested person.** Any person financially interested in any fruits or vegetables subject to the provisions of this chapter may apply to the director for inspection and certification as to whether such fruits or vegetables meet the requirements provided for in this chapter or rules adopted hereunder. [1961 c 29 § 17.]

**15.30.180 Fees for inspection and certification.** The director shall prescribe the necessary fees to be charged to the licensee or owner for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter or rules adopted hereunder. The fees provided for in this section shall become due and payable by the end of the next business day and if such fees are not paid within the prescribed time, the director may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears: *Provided*, That the director in such instances may demand and collect inspection and certification fees prior to inspecting and certifying any fruits or vegetables for such person. [1961 c 29 § 18.]

**15.30.190 Certificate as evidence.** Every inspection certificate issued by the director under the provisions of this chapter shall be received in all courts of the state as prima facie evidence of the statement therein. [1961 c 29 § 19.]

**15.30.200 Disposition of fees.** All moneys collected under the provisions of this chapter for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter shall be handled and deposited in the manner provided for in \*chapter 15.16 RCW, as enacted or hereafter amended, for the handling of inspection and certification fees derived for the inspection of any fruits and vegetables. [1961 c 29 § 20.]

**\*Reviser's note:** Chapter 15.16 RCW was repealed by 1963 c 122. Later enactment, see chapter 15.17 RCW.

**15.30.210 Unlawful sales, acts, or use of words "controlled atmosphere storage" and terms of similar import.** It shall be unlawful for any person to sell, offer for sale, hold for sale, or transport for sale any fruits or vegetables represented as having been exposed to "controlled atmosphere storage" or to use any such term or form of words or symbols of similar import unless such fruits or vegetables have been stored in controlled atmosphere storage which meets the requirements of this chapter or rules adopted hereunder. [1961 c 29 § 21.]

**15.30.220 Injunctions authorized.** The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1961 c 29 § 22.]

**15.30.230 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1961 c 29 § 23.]

**15.30.240 Prior civil or criminal liability not affected.** The enactment of this chapter shall not have the effects of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on February 21, 1961. [1961 c 29 § 24.]

**15.30.250 Penalties for violating chapter.** Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense. [1961 c 29 § 25.]

**15.30.260 Cooperation, agreements with other governmental agencies.** The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of federal government in order to carry out the purpose and provisions of this chapter. [1961 c 29 § 26.]

**15.30.900 Fruits and vegetables in storage prior to enactment of chapter.** Any fruits or vegetables now in controlled atmosphere storage and removed after February 21, 1961 may be marked, shipped, represented and sold as having been exposed to controlled atmosphere storage if such fruits and vegetables meet the requirements of this chapter and the rules and regulations adopted hereunder. [1961 c 29 § 28.]

**15.30.910 Severability—1961 c 29.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1961 c 29 § 27.]

## Chapter 15.32

### DAIRIES AND DAIRY PRODUCTS

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 15.32.910 Chapter cumulative.
- Butter, milk, etc., containers, packages, etc.: Chapter 19.94 RCW.*

**15.32.010 Definitions.** For the purpose of chapter 15.32:

"Supervisor" means the supervisor of dairy and livestock;

"Dairy" means a place where milk from one or more cows or goats is produced for sale;

"Creamery" means a structure wherein milk or cream is manufactured into butter for sale;

"Milk plant" means a structure wherein milk is bottled, pasteurized, clarified, or otherwise processed;

"Cheese factory" means a structure where milk is manufactured into cheese;

"Factory of milk products" means a structure, other than a creamery, milk plant, cheese factory, milk condensing plant or ice cream factory, where milk or any of its products is manufactured, changed, or compounded into another article, or where butter is cut or wrapped; except freezing of ice cream from a mix compounded in a licensed creamery, milk plant, cheese factory, milk condensing plant or ice cream factory;

"Milk condensing plant" means a structure where milk is condensed or evaporated;

"Ice cream factory" means a structure which complies with the sanitary requirements of RCW 15.32.080, where ice cream mix is produced for sale or distribution, and may include freezing such mix into ice cream;

"Counter ice cream freezer" means counter type freezing machines usually operated in retail establishments;

"Sterilized milk" means milk that has been heated under six pounds of steam pressure and maintained thereat for not less than twenty minutes;

"Modified milk" means milk that has been altered in composition to conform to special nutritional requirements;

"Milk product" means an article manufactured or compounded from milk, whether or not the milk conforms to the standards and definitions herein;

"Milk byproduct" means a product of milk derived or made therefrom after the removal of the milk fat or milk solids in the process of making butter or cheese, and includes skimmed milk, buttermilk, whey, casein, and milk powder;

"Butter" means the product made by gathering the fat of milk or cream into a mass containing not less than eighty percent of milk fat, and which also contains a small portion of other milk constituents, with or without harmless coloring matter;

"Renovated butter" means butter that has been reduced to a liquid state by melting and drawing off the liquid or butter oil, and has thereafter been churned or manipulated in connection with milk, cream, or other product of milk;

"Reworked butter" means the product obtained by mixing or rechurning butter made on different dates or

at different places: *Provided*, That the mixing of remnants from one day's churning or cutting with butter from the churning of the same creamery on the next day shall not make the product reworked butter;

"Butter substitute" means a compound of vegetable oils with milk fats or milk solids and all compounds of milk fats or milk solids with butter when the compound contains less than eighty percent of milk fat;

"Oleomargarine" means all manufactured substances, extracts, mixtures, or compounds, including mixtures or compounds with butter, known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral, and includes all lard and tallow extracts and mixtures and compounds of tallow, beef fat, suet, lard, lard oil, intestinal fat and offal fat made in imitation or semblance of butter or calculated or intended to be sold as butter;

"Imitation cheese" means any article, substance, or compound, other than that produced from pure milk or from the cream from pure milk, which is made in the semblance of cheese and designed to be sold or used as a substitute for cheese. The use of salt, lactic acid, or pepsin, and harmless coloring matter in cheese shall not render the true product an imitation. Nothing herein shall prevent the use of pure skimmed milk in the manufacture of cheese;

"Milk vendor" or "milk dealer" means any person who sells, furnishes or delivers milk, skimmed milk, buttermilk, or cream in any manner.

All dairy products mentioned in this chapter mean those fit or used for human consumption. [1961 c 11 § 15.32.010. Prior: 1955 c 238 § 71; prior: (i) 1943 c 90 § 1, part; 1933 c 188 § 1, part; 1929 c 213 § 1, part; 1927 c 192 § 1, part; 1919 c 192 § 1, part; Rem. Supp. 1943 § 6164, part. (ii) 1929 c 213 § 6, part; 1927 c 192 § 16, part; 1921 c 104 § 3, part; 1919 c 192 § 41, part; RRS § 6203, part.]

**15.32.051 Definitions and standards—Adoption of rules—Repealed statutes continued as rules.** The director may, by rule, establish and/or amend definitions and standards for dairy products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for dairy products promulgated by the secretary of the United States department of health, education and welfare: *Provided*, That the director shall at all times provide reasonable standards for ice milk.

The director may adopt any other rules necessary to carry out the purposes of this chapter. The adoption of all rules provided for in this section shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning the adoption of rules, except as otherwise provided in this section.

The definitions constituting sections 15.32.020, 15.32.030, 15.32.040 and 15.32.050, chapter 11, Laws of 1961 and RCW 15.32.020, 15.32.030, 15.32.040 and 15.32.050 hereinabove repealed as statutes are hereby constituted and declared to be operative and to remain in force as the rules of the department of agriculture until such time as amended, modified, or revoked by the director of agriculture. [1963 c 58 § 2.]

*Adoption of rules as to imitation of dairy products: RCW 15.36.011.*

**15.32.060 Insanitary dairies, when.** A dairy is deemed insanitary when:

(1) The drinking water for cows or goats is stagnant or polluted; or

(2) The yards are filthy or insanitary, or are the depositories of manure which is allowed to decay or ferment; or

(3) The barn or stable is not provided with suitable floors, gutters and drains, or are not properly sealed from the feed storage; or the interior thereof has not had a coat of lime, whitewash, or paint at least once each year; or at least three square feet of window light is not provided for each cow; or

(4) The milk room provided for cooling, mixing, bottling, canning, separating, or keeping milk, is used for any other purpose; or is not screened against flies or insects; or is located in a dwelling house, barn, or poultry house; or if located in a building where a business, occupation, or trade other than handling, bottling, or processing milk is conducted it is not separated therefrom by a sealed or plastered partition; or has a door leading directly into a barn where cows are kept or milked, except that double doors and a vestibule between is permitted in lieu of an outside door; or is used by a person as living or sleeping quarters; or is occupied by animals or fowl of any kind; or if a drainage system adequate to carry drainage one hundred feet away is not provided; or it is not provided with a floor of concrete or other equally impervious material; or the walls and ceiling are not finished with a smooth surface which must be covered once a year with a coat of lime whitewash or paint; or the walls or floor of the milk room become soiled with manure, urine, dirt or other filth;

(5) Any urinal, privy vault, open cesspool, pig pen, stagnant water, manure accumulation, or other filth is permitted within one hundred feet of any milk room, or within fifty feet of any place where milking is done, except that modern, flush-type toilets are permitted adjacent to milk rooms or barns if they are located in separate, properly ventilated and sealed rooms which do not open into any room where milk is handled;

(6) The person or wearing apparel of any person who comes in contact with milk or milk products becomes soiled or is not washed with reasonable frequency;

(7) Milking stools are not kept clean;

(8) Milking machines or other equipment of any kind which comes in contact with milk, is not thoroughly cleansed and sterilized in the milk room, with boiling water, live steam, or an approved chemical method, after every use thereof; or if the same becomes rusty or insanitary;

(9) The floor of any barn, shed, or stable in which cows or goats are kept or milked, or of a milk room, is so constructed or in such condition as to permit liquids to flow or soak underneath the floor, or among the interstices thereof in such a manner as to cause decay or fermentation to take place; or

(10) If the milk room is not provided with suitable windows or openings permitting the entrance of light

and air from the outside of the building without passing through any other portion thereof;

(11) When there is permitted to exist any other cause or thing calculated or tending to render the milk or its products unclean, impure and unhealthy. [1961 c 11 § 15.32.060. Prior: (i) 1943 c 90 § 2, part; 1929 c 213 § 2, part; 1927 c 192 § 2, part; 1919 c 192 § 2, part; Rem. Supp. 1943 § 6165, part. (ii) 1927 c 192 § 20; 1919 c 192 § 73; RRS § 6235.]

**15.32.070 Closing of insanitary dairies.** Whenever any dairy becomes insanitary within the meaning of RCW 15.32.060 it may be closed until such time as the condition is remedied, and it is unlawful to sell milk or milk products from any closed or insanitary dairy. [1961 c 11 § 15.32.070. Prior: 1943 c 90 § 2, part; 1929 c 213 § 2, part; 1927 c 192 § 2, part; 1919 c 192 § 2, part; Rem. Supp. 1943 § 6165, part.]

**15.32.080 Insanitary milk plants.** A structure or place where milk or cream is processed or manufactured into other products, or where handled, stored, or kept for sale shall be deemed insanitary in the following circumstances:

(1) If milk or cream is received or kept which has reached a stage of putrefactive fermentation;

(2) If milk or cream is received or kept in containers that have not been sterilized with boiling water or live steam after each delivery;

(3) If utensils and apparatus that come in contact with milk or its products in the process of manufacture are not thoroughly washed and sterilized by means of boiling water or live steam after each using;

(4) If the floor is such as to permit liquids to soak into the interstices thereof in such manner as to permit fermentation and decay, or such as may not be readily kept free from dirt and filth;

(5) If drains are not provided that will convey refuse milk, water, and sewage to a point at least fifty yards distant;

(6) If a cesspool, privy vault, hog yard, slaughterhouse, henhouse, manure, or decaying vegetable or animal matter that will produce foul odors is permitted to exist within such distance as will permit the odors therefrom to reach such place;

(7) If it lacks sufficient light and air to secure good ventilation;

(8) If in a building used in connection therewith any insects, vermin, or other species of animal life are permitted;

(9) If upon the floor or walls thereof, any milk or its products or any other filth is allowed to accumulate, ferment, or decay;

(10) If the person or clothing of a person coming in contact with milk or milk products therein is unclean;

(11) If there is permitted to exist any other cause or thing tending to render the milk or its products produced, kept, handled, or manufactured therein unclean, impure, and unhealthy. [1961 c 11 § 15.32.080. Prior: 1923 c 27 § 1; 1919 c 192 § 3; RRS § 6166.]

**15.32.090 Duties of the director.** The director shall:

(1) Enforce all laws relating to the production or manufacture, sale or distribution of milk and milk products, and cause to be prosecuted persons suspected of violations thereof. The attorney general, and prosecuting attorney of any county shall, upon request of the director, render him legal assistance in performing such duties;

(2) Adopt and promulgate rules and regulations for the issuance of licenses required of persons who handle milk or milk products; for hearing complaints against such licensees; and the revocation of such licenses;

(3) Inspect all structures and places where milk or milk products are produced, manufactured, processed, stored, or sold, and all vehicles used in the transportation thereof, and all apparatus used in testing or grading milk or cream, and conduct revisory tests when there is reason to believe that milk or cream for sale, is not being accurately tested, graded, measured, or weighed. Defective apparatus shall be condemned;

(4) Inspect any milk or milk products, and imitations thereof, which he may suspect of being impure, adulterated, or counterfeit, and prosecute any persons engaged in the manufacture or sale of such products in violation of law.

Said duties may be performed by the director, or supervisor or any inspector of the department. [1961 c 11 § 15.32.090. Prior: (i) 1919 c 192 § 34; RRS § 6196. (ii) 1919 c 192 § 35; RRS § 6197. (iii) 1919 c 192 § 36; RRS § 6198. (iv) 1927 c 192 § 13; 1919 c 192 § 37; RRS § 6199. (v) 1927 c 192 § 14; 1919 c 192 § 38; RRS § 6200. (vi) 1927 c 192 § 15, part; 1919 c 192 § 39, part; RRS § 6201, part. (vii) 1919 c 192 § 75; RRS § 6237. (viii) 1919 c 192 § 81; RRS § 6243. (ix) 1899 c 43 § 10; 1895 c 45 § 10; RRS § 6255.]

**15.32.100 Licenses of milk vendors, dealers—Fee—Contents—Duration—Revocation.** Every person who sells, offers or exposes for sale, barter, or exchanges any milk or milk product as defined in RCW 15.36.010, or departmental rules and regulations which may be substituted therefor, must have a milk vendor's license to do so: *Provided*, That such license shall not include retail stores or restaurants which purchase milk prepackaged or bottled elsewhere for sale at retail or establishments which sell milk only for consumption in such establishment. Such license, issued by the director on application and payment of a fee of two dollars, shall contain the license number, and name, residence and place of business, if any, of the licensee. It shall be nontransferable, shall expire June 30th subsequent to issue, and may be revoked by the director, upon reasonable notice to the licensee, for any violation of or failure to comply with any provision of this chapter or any rule or regulation, or order of the department, or any officer or inspector thereof. [1963 c 58 § 3; 1961 c 11 § 15.32.100. Prior: (i) 1929 c 213 § 5; 1927 c 192 § 12; 1919 c 192 § 31; 1899 c 43 § 25; RRS § 6193. (ii) 1923 c 27 § 9; 1919 c 192 § 32; 1899 c 43 § 25; RRS § 6194.]

**15.32.110 Plant licenses—Fee—Revocation.** Every creamery, milk plant, shipping station, milk-condensing plant, factory of milk products, and other person who receives or purchases milk or cream in bulk and by weight or measure or upon the basis of milk fat contained therein shall obtain annually a license to do so. The license shall be issued by the director upon payment of ten dollars and his being satisfied that the building or premises where the milk or cream is to be received is maintained in a sanitary condition in accordance with the provisions of this chapter; except, such license shall not be required of persons purchasing milk or cream for their own consumption nor of hotels, restaurants, boarding houses, eating houses, bakeries, or candy manufacturing plants.

The license shall expire on June 30th subsequent to date of issue unless sooner revoked by the director, upon reasonable notice to the licensee, for a failure to comply with the provisions of this chapter, and the rules and regulations issued hereunder.

A licensee under this section shall not be required to obtain a milk vendor's license. [1961 c 11 § 15.32.110. Prior: (i) 1927 c 192 § 11; 1923 c 27 § 8; 1919 c 192 § 29; RRS § 6192. (ii) 1919 c 192 § 33; RRS § 6195.]

**15.32.120 Adulteration of milk and milk products.** Adulterated within the meaning of this chapter means:

(1) Milk, skimmed milk, buttermilk or cream which has been reduced, altered or changed in any respect by the addition of water or other substance: *Provided*, That no milk, skimmed milk, buttermilk or cream shall be deemed to be adulterated if such milk, skimmed milk, buttermilk or cream contains any added ingredient or substance in the amount and kind prescribed or allowed by a rule or regulation promulgated by the director subsequent to a public hearing pursuant to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended; and

(2) Milk and milk products which do not conform to the definitions and standards set forth in RCW 15.32-.010 through 15.32.050. [1969 ex.s. c 102 § 5; 1961 c 11 § 15.32.120. Prior: (i) 1919 c 192 § 67; RRS § 6229. (ii) 1919 c 192 § 69; RRS § 6231.]

**15.32.130 Unlawful sales and service of milk, milk products.** No person shall:

(1) Serve as milk, cream or a milk product for human consumption any substance which is adulterated within the meaning of this chapter; nor

(2) Serve for human consumption in any place where meals are served, either as part of a meal or otherwise, ice cream, nut ice cream, fruit ice cream, ice milk or any substance resembling ice cream or ice milk, which is adulterated within the meaning of this chapter; nor

(3) Sell or offer for sale butter, cheese, or condensed milk which is adulterated within the meaning of this chapter; except that milk from cows which have reacted to tuberculin tests but exhibit no physical symptoms of disease, may be used to make butter, cheese, or condensed milk if such milk has been pasteurized or sterilized as required by the provisions of this chapter and a

permit to do so has been issued by the director or departmental inspector; nor

(4) Add to any milk, cream, or condensed milk any gelatine, gum or other substance for the purpose of increasing the apparent richness thereof; except that nothing in this chapter shall be construed as prohibiting the use of harmless coloring matter and common salt in making butter or cheese, or harmless coloring or flavoring matter in ice cream or ice milk, or rennet, lactic acid or pepsin in making cheese. [1961 c 11 § 15.32.130. Prior: (i) 1919 c 192 § 47; RRS § 6209. (ii) 1919 c 192 § 58; RRS § 6220. (iii) 1919 c 192 § 62; RRS § 6224. (iv) 1919 c 192 § 66; 1907 c 211 § 1; 1905 c 50 § 1; 1901 c 94 § 1; RRS § 6228. (v) 1919 c 192 § 68; RRS § 6230.]

**15.32.140 Impure milk and cream.** Milk or sweet cream which is not free from foreign substances, coloring matter, or preservatives, pus cells or blood cells, or which contains more than one hundred thousand bacteria or germs of all kinds to the cubic centimeter or which has been infected by or exposed to any contagious or infectious disease, or which has not cooled to a temperature of fifty-five degrees Fahrenheit within thirty minutes after being drawn or separated, or any pasteurized milk that contains in excess of twenty-five thousand bacteria per cubic centimeter in the finished product, shall be deemed impure, unwholesome, and adulterated. [1961 c 11 § 15.32.140. Prior: 1929 c 213 § 12; 1927 c 192 § 19; 1919 c 192 § 70; RRS § 6232.]

**15.32.150 Sale of adulterated or impure products prohibited.** It is unlawful to manufacture, sell, offer for sale, or deliver any unclean, impure, or adulterated milk or milk product or any product prepared therefrom. Milk, cream, or milk products when unfit for human consumption may be condemned, destroyed, or rendered unusable for human consumption. [1961 c 11 § 15.32.150. Prior: 1929 c 213 § 8; 1923 c 27 § 10; 1919 c 192 § 48; RRS § 6210.]

**15.32.160 Sale of products from diseased animals prohibited.** It is unlawful to sell, offer for sale, or deliver milk or products produced from milk from cows or goats affected with disease or of which the owner thereof has refused official examination and tests for disease, or produced within ten days before or seven days after parturition. [1961 c 11 § 15.32.160. Prior: 1929 c 213 § 9; 1919 c 192 § 49; RRS § 6211.]

**15.32.170 Skimmed milk, labels—Sale sign.** Milk from which the cream has been removed or contains less than three and twenty-five one hundredths percent milk fat is skimmed milk, and may be sold, offered for sale and delivered only in containers labeled on the outside with the words "skimmed milk" in black letters at least one inch high.

Skimmed milk, as so defined, may not be served in any place which serves meals for compensation or sells food for consumption on the premises unless there is conspicuously displayed at all times in full view of the public a durable sign bearing the words "skimmed milk sold here" in letters at least one inch high. [1961 c 11 §

15.32.170. Prior: (i) 1919 c 192 § 51; 1899 c 43 § 26; RRS § 6213. (ii) 1919 c 192 § 52; RRS § 6214.]

**15.32.180 Temperatures for milk and cream.** All milk and sweet cream shall be cooled in the dairy where it is produced to a temperature of not more than sixty degrees Fahrenheit within thirty minutes after the same is drawn from the cows or goats, or separated, and shall not before being delivered to the milk plant, creamery, cheese factory, factory of milk products, or other place where the same is to be distributed, bottled, pasteurized or manufactured be permitted to reach a temperature above sixty degrees Fahrenheit, and all such milk and cream shall thereafter be maintained at a temperature not to exceed fifty degrees Fahrenheit until delivered to the consumer: *Provided*, That nothing in this section shall be deemed applicable to milk or cream while being pasteurized. [1961 c 11 § 15.32.180. Prior: 1949 c 168 § 21; 1929 c 213 § 10; 1923 c 27 § 11; 1919 c 192 § 53; Rem. Supp. 1949 § 6215.]

**15.32.190 Bottling of milk, skimmed milk, buttermilk, cream.** Milk, skimmed milk, buttermilk or cream shall not be bottled, or transferred from one container to another, in the open air or in or upon any vehicle.

Such bottling or transferring must be done in a milk room, creamery, milk plant, or milk storage place, which is maintained in a sanitary condition as required by this chapter. [1961 c 11 § 15.32.190. Prior: 1933 c 188 § 4; 1919 c 192 § 54; RRS § 6216.]

**15.32.200 Sterilizing containers.** All containers of milk, cream, ice cream, or ice milk, intended for human consumption, received from a common carrier shall be thoroughly sterilized with boiling water or live steam before they are returned to the consignor or a common carrier. Every vendor who receives such containers from consumers shall so sterilize the same before returning them to the dealer or distributor. [1961 c 11 § 15.32.200. Prior: (i) 1919 c 192 § 5; RRS § 6168. (ii) 1919 c 192 § 6; RRS § 6169.]

**15.32.220 Bottle cap labeling—Violation, misdemeanor.** Any person who sells or offers for sale milk or cream in bottles with caps which fail to have the name of the owner inscribed thereon, or which indicate a quality that cannot be determined by laboratory, chemical or bacteriological examination, or in any other way wrongfully or fraudulently brands the same as to name or otherwise, for the purpose of inducing a sale, shall be guilty of a misdemeanor. [1961 c 11 § 15.32.220. Prior: (i) 1929 c 213 § 17; 1911 c 39 § 1; RRS § 6282. (ii) 1911 c 39 § 2; RRS § 6283. (iii) 1911 c 39 § 3; RRS § 6284.]

**15.32.230 Separators—Cleaning—Kept in milk room.** Every cream separator from which milk or cream is sold or offered for sale shall be thoroughly cleaned within three hours after each use and kept clean until the next use; and shall be kept in a milk room, as herein defined, or a room separated from the place where cows are kept by tightly sealed or plastered partitions having no openings.

No person shall sell or offer for sale milk or cream from a separator which fails to conform to this section. [1961 c 11 § 15.32.230. Prior: (i) 1919 c 192 § 8; RRS § 6171. (ii) 1923 c 27 § 2, part; 1919 c 192 § 9, part; RRS § 6172, part.]

**15.32.240 Milk and cream at dairy—Kept in milk room.** While at a dairy, milk and cream must at all times be kept in a milk room, as herein defined. [1961 c 11 § 15.32.240. Prior: 1923 c 27 § 2, part; 1919 c 192 § 9, part; RRS § 6172, part.]

**15.32.250 Protection against flies, filth.** No milk or milk product may be offered for sale unless it is kept properly protected from flies, dust, dirt, or other injurious contamination. [1961 c 11 § 15.32.250. Prior: 1919 c 192 § 4; RRS § 6167.]

**15.32.260 Sanitary handling of shipments.** Milk and milk products when being transported shall be kept in a sanitary condition, and shall not be exposed to contamination or allowed to remain where it or its container is exposed to the direct rays of the sun. [1961 c 11 § 15.32.260. Prior: 1919 c 192 § 7; RRS § 6170.]

**15.32.270 Vehicles—Marking, coverings.** All vehicles in or from which milk, skimmed milk, buttermilk, butter, cream, ice cream, or ice milk is gathered, sold, or delivered shall have the name and address of the owner plainly painted thereon, on both sides, in letters not less than three inches high and not less than one and one-half inches wide. Between the first day of May and the thirtieth day of September, such vehicles shall be equipped with a covering which will adequately protect the products from the heat of the sun. [1961 c 11 § 15.32.270. Prior: (i) 1919 c 192 § 55; RRS § 6217. (ii) 1919 c 192 § 61; RRS § 6223.]

**15.32.280 "Certified" milk sale regulation.** No person selling, offering for sale, or exchanging any milk, cream or milk product shall represent the same as being "certified" unless it has been certified by the city or county health officer or county medical society, according to the rules and regulations prescribed by the American association of medical commissions. [1961 c 11 § 15.32.280. Prior: 1919 c 192 § 57; RRS § 6219.]

**15.32.300 "Ice milk" serving, regulation.** Any person serving ice milk shall display in a conspicuous place a sign containing the words "ice milk served here" in plain gothic type not less than two inches high. [1961 c 11 § 15.32.300. Prior: 1955 c 238 § 77; prior: 1943 c 90 § 1, part; 1919 c 192 § 1, part; Rem. Supp. 1943 § 6164, part.]

**15.32.310 Malted milk—Use not adulteration.** The use of malted milk or substances which conform to the standards herein prescribed for malted milk, is not adulteration, and such malted milk may be sold or served with milk or milk products, or separately, provided it is sold or served as such and not as pure milk. [1961 c 11 § 15.32.310. Prior: 1919 c 192 § 50; RRS § 6212.]



**15.32.330 Butter labeling—Violation, misdemeanor.** Prints of butter in sizes of two pounds or less shall not be sold unless they are plainly labeled with the name or official number of the manufacturer, jobber or retailer thereof. Persons who violate this section shall be guilty of a misdemeanor. Possession of butter with intent to sell not so wrapped and labeled is prima facie evidence of guilt. [1961 c 11 § 15.32.330. Prior: 1933 c 188 § 5; RRS § 6225-1.]

**15.32.340 Butter, milk, substitutes—Use of names restricted.** No person shall use the words "butter," "creamery," "dairy" or "butterine," or any picture or representation of a cow, in any advertisement, sign or card relating to or in connection with the sale, serving or furnishing of oleomargarine or other substance designed as a substitute for or an imitation of butter, or of milk from which the milk fat has been removed and vegetable or other oil substituted therefor. [1961 c 11 § 15.32.340. Prior: 1919 c 192 § 45; RRS § 6207.]

**15.32.360 "Renovated butter"—Regulations—Penalty.** No person shall sell, offer for sale, or possess with intent to sell any process butter unless the words "renovated butter" are marked in ink on the side of the package in capital letters one inch high and one-half inch wide. No retailer shall sell process butter unless a card bearing the words "renovated butter" is displayed on the package from which he is selling so that it may be easily read.

Whoever violates the provisions of this section is guilty of a misdemeanor and shall be fined for each offense not less than twenty-five nor more than one hundred dollars, or imprisoned for not less than one nor more than six months, or by both fine and imprisonment. [1961 c 11 § 15.32.360. Prior: 1899 c 43 § 30; RRS § 6251.]

**15.32.370 Butter, milk, substitutes—Use in state institutions prohibited—Exception.** No margarine, substitute butter, renovated butter, or any other substance designed as an imitation of or substitute for butter or any condensed milk from which the butter fat has been removed and a vegetable or other oil has been substituted therefor shall be used in any of the charitable hospital, medical, reformatory or penal institutions maintained by the state or which receives from the state any money, appropriation or financial assistance whatsoever: *Provided*, That such institution may use margarine when supplied for distribution by agencies of the United States government, but only when butter is not available to such institution as a surplus commodity. [1967 ex.s. c 40 § 1; 1965 c 73 § 1; 1961 c 11 § 15.32.370. Prior: 1929 c 213 § 7; 1919 c 192 § 44; RRS § 6206.]

**Reviser's note:** This section was both amended and repealed by 1967 ex.s. c 40.

**15.32.370 Butter, milk, substitutes—Use in state institutions prohibited—Exception.** [1965 c 73 § 1; 1961 c 11 § 15.32.370. Prior: 1929 c 213 § 7; 1919 c 192 § 44; RRS § 6206.] Repealed by 1967 ex.s. c 40 § 2.

**15.32.380 "Washington creamery butter", "reworked butter"—Use of.** No person shall:

(1) Use the words "Washington creamery butter" as a brand, emblem or trademark upon any butter, or imitation thereof, or substance resembling butter, or upon any container of any such product; or

(2) Sell, offer for sale or possess with intent to sell reworked butter unless on the side of the package is marked with ink the words "reworked butter" in capital letters one inch high and one-half inch wide. [1961 c 11 § 15.32.380. Prior: 1921 c 104 § 5; 1919 c 192 § 63; 1899 c 43 §§ 29, 30; RRS § 6225.]

**15.32.390 "Pasteurization", "pasteurize" and similar terms defined.** "Pasteurization," "pasteurize" and similar terms refer to the process of heating every particle of milk or milk products to at least one hundred forty-five degrees Fahrenheit, and holding at such temperature for at least thirty minutes, or to at least one hundred sixty-one degrees Fahrenheit, and holding at such temperature for at least fifteen seconds in approved and properly operated equipment under the provisions of this chapter: *Provided*, That nothing contained in this definition shall be construed as disbaring any other process which has been demonstrated to be equally efficient and which is approved by the director. [1963 c 58 § 5; 1961 c 11 § 15.32.390. Prior: 1955 c 238 § 81; prior: (i) 1949 c 168 § 20; 1943 c 90 § 3; 1927 c 192 § 3; 1923 c 27 § 4; 1919 c 192 § 11; Rem. Supp. 1949 § 6174. (ii) 1919 c 192 § 13; RRS § 6176.]

**15.32.400 Pasteurization apparatus, thermometers—Records.** Every pasteurizing plant or apparatus shall be equipped with a device which will insure the maintenance of the temperature at the degrees and for the periods herein required, and with separate thermometers approved by the director, for indicating and recording the temperature degrees and holding periods.

Such thermometer records shall be kept for two months or delivered to the director, and shall be at all times open to inspection by the director and all officials charged with enforcing the laws and ordinances relating to milk or milk products or public health. [1961 c 11 § 15.32.400. Prior: (i) 1919 c 192 § 14; RRS § 6177. (ii) 1933 c 188 § 3; 1929 c 213 § 3; 1919 c 192 § 15; RRS § 6178. (iii) 1919 c 192 § 16; RRS § 6179. (iv) 1919 c 192 § 40; RRS § 6202.]

**15.32.410 Pasteurization only at butter and cheese plant.** All milk or cream used in the manufacture of pasteurized butter or cheese shall be pasteurized only in the plant where the butter or cheese is manufactured. [1961 c 11 § 15.32.410. Prior: 1919 c 192 § 12; RRS § 6175.]

**15.32.420 "Pasteurized"—Use of regulated.** No person shall use the word "pasteurized" in connection with the sale, designation, advertising, labeling, or billing of milk, cream, or any milk product unless the same and all milk products used in the manufacture thereof consist exclusively of milk, skimmed milk, or cream that has been pasteurized. [1961 c 11 § 15.32.420. Prior: 1919 c 192 § 71; RRS § 6233.]

**15.32.430 Cattle breed name—Use in trade—Penalty.** No person shall without permission, use in his corporate, firm, or trade name, brand, or advertising, the name of any breed of dairy cattle unless the milk



sold, offered for sale, or advertised, is produced entirely from a herd, each cow of which possesses more than fifty percent of the blood of the breed of cattle so named: *Provided*, That milk solids, as defined by the department of agriculture, added to nonfat milk, skim milk, and low-fat milk as defined by the department of agriculture shall not be subject to such breed requirements.

Any person desiring to use the name of a breed of dairy cattle in connection with the sale of his milk shall make application to the supervisor so to do, and upon a sufficient showing the supervisor may grant permission.

Any person violating this section shall be punished by a fine of not less than twenty-five dollars for the first offense and not less than fifty nor more than one hundred dollars for each subsequent offense. [1973 c 31 § 1; 1961 c 11 § 15.32.430. Prior: (i) 1933 c 23 § 1; RRS § 6260-1. (ii) 1933 c 23 § 2; RRS § 6260-2. (iii) 1933 c 23 § 3; RRS § 6260-3.]

#### **15.32.440 Brands—Registration—Fee—Use.**

A person engaged in the manufacture, sale, or distribution of milk or milk products may adopt a brand of ownership which may consist of a name, design, or mark, and may upon the payment of a fee of fifteen dollars, file with the director an application for the exclusive right to the use thereof. The application shall contain the name and address of the applicant, a description of the brand proposed and the use to be made thereof. The director shall refuse the application if the brand is the same or so nearly similar to any brand theretofore registered, as to be misleading. Otherwise the application shall be granted and such fact, together with a description of the brand, shall be entered in a register to be kept by the director. A brand must be stamped, embossed or affixed by means of a metal plate on each container, or in the case of wooden containers must be burned therein. Upon the sale of a container the brand thereon shall become void. [1961 c 11 § 15.32.440. Prior: (i) 1927 c 192 § 22, part; 1923 c 27 § 12, part; 1919 c 192 § 86, part; 1915 c 101 § 1, part; RRS § 6259, part. (ii) 1915 c 101 § 2; RRS § 6260.]

**15.32.450 Brands, branded containers—Unlawful use of—Seizure authorized.** It shall be unlawful for a person other than the registered owner thereof, to possess for sale, barter, or use such a branded container, and possession by any junk dealer or vendor shall be prima facie evidence of possession for sale, barter, or use. When a branded container is in the possession of a person other than the registered owner, the director may seize and hold it until it is established to his satisfaction that such possession is lawful. No person, other than the owner, shall deface or remove a brand, or adopt a registered brand of another, or use a branded container, except to transport dairy products to and from the owner of the container. [1961 c 11 § 15.32.450. Prior: (i) 1927 c 192 § 22, part; 1923 c 27 § 12, part; 1919 c 192 § 86, part; 1915 c 101 § 1, part; RRS § 6259, part. (ii) 1915 c 101 § 3; RRS § 6261. (iii) 1927 c 192 § 22a; 1915 c 101 § 4; RRS § 6262. (iv) 1927 c 192 § 22b; 1915 c 101 § 5; RRS § 6263.]

**15.32.460 Branded containers—Return—Expense.** Any person receiving dairy products in containers bearing registered brands shall return them to the rightful owners. The inspectors shall seize branded containers not rightfully used and return them to the person in whose name they are registered. Any expense in transporting seized containers shall be paid by the owner. Neither the director nor any person who returns such containers shall be liable for any lost in transportation. [1961 c 11 § 15.32.460. Prior: 1927 c 192 § 23; 1919 c 192 § 87; 1915 c 101 § 6; RRS § 6264.]

**15.32.470 Butter scored by director—Canceling brand.** The director may score the butter made by a creamery and his score shall be final. He shall cancel any brand issued to a creamery when the butter manufactured therein does not score ninety points. [1961 c 11 § 15.32.470. Prior: (i) 1905 c 92 § 2; RRS § 6252. (ii) 1905 c 92 § 3; RRS § 6253.]

**15.32.480 Branding cheese—Exceptions.** Every person who manufactures cheese shall, before removing it from the factory, brand it on the bandage or container with his name and address and the words "full cream cheese," or "half skim cheese," or "quarter skim cheese," or "skim cheese," as the case may be, according to the definitions and standards established in this chapter based upon the percentage of milk fat and solids contained in the cheese. Such brand shall be in plain, uncondensed gothic type not less than one-half inch high, and printed in such a manner that it cannot be readily obliterated.

The provisions of this chapter shall not apply to cheese commonly known as "Edam," "Pineapple," "Brickstein," "Limburger," "Swiss," or other hand-made cheese not made by the ordinary cheddar process. [1961 c 11 § 15.32.480. Prior: 1927 c 192 § 17, part; 1919 c 192 § 64, part; 1897 c 15 § 2, part; 1895 c 45 § 3, part; RRS § 6226, part.]

**15.32.490 "Imitation cheese" branded.** Every person who manufactures an imitation of or substitute for cheese shall, before it is removed from his factory distinctly and durably brand it with the words "imitation cheese," and on every container thereof print his name and address in plain, uncondensed gothic letters not less than one inch high in such manner that they cannot be readily obliterated. [1961 c 11 § 15.32.490. Prior: 1919 c 192 § 46, part; RRS § 6208, part.]

**15.32.500 Brand violations—Sale as knowledge.** Failure to brand products as required in RCW 15.32.480 and 15.32.490, and the offering for sale, selling, or otherwise disposing of such products when unbranded, shall constitute violations of this chapter. Selling such unbranded products constitutes knowledge on the part of the seller that the same is not full cream cheese. [1961 c 11 § 15.32.500. Prior: (i) 1919 c 192 § 46, part; RRS § 6208, part. (ii) 1927 c 192 § 17, part; 1919 c 192 § 64, part; 1897 c 15 § 2, part; 1895 c 45 § 3, part; RRS § 6226, part. (iii) 1927 c 192 § 18; 1919 c 192 § 65; RRS § 6227.]

**15.32.510 Inspectors—Appointment—Qualifications—Powers.** The director or a county or city or town may appoint one or more inspectors of milk, dairies, and dairy products, who are graduates of a recognized dairy school, or have completed a college course in dairying.

The inspectors may enter any place where milk and its products are stored and kept for sale and any conveyance used to transport milk or cream, and take samples for analysis: *Provided*, That this shall not apply to samples of milk or cream taken for bacteriological examination. [1961 c 11 § 15.32.510. Prior: (i) 1929 c 213 § 13; 1907 c 234 § 1; RRS § 6267. (ii) 1929 c 213 § 14; 1907 c 234 § 2; RRS § 6268.]

**15.32.520 Milk and cream analysis.** The chemist of any state institution shall correctly analyze samples of milk or cream sent him by a city milk inspector and report to the inspector promptly the result of the analysis, without extra compensation, or charge to the city.

A bacteriologist or chemist employed by a city may analyze milk for standard of quality, adulteration, contamination, and unwholesomeness, and his analysis shall have the same effect as one made by a chemist of a state institution. [1961 c 11 § 15.32.520. Prior: 1907 c 234 § 14; RRS § 6280.]

**15.32.530 Analysis—Report of by inspector—Time limit.** An inspector or any state or city officer who obtains a sample of milk for analysis, shall within ten days after obtaining the result of the analysis, send the result to the person from whom the sample was taken or to the person responsible for the condition of the milk. [1961 c 11 § 15.32.530. Prior: 1907 c 234 § 12; RRS § 6278.]

**15.32.540 Prerequisite to prosecution for quality.** A person is not liable to prosecution because the milk produced by him is not of good standard quality unless the milk was taken upon his premises or while in his possession or under his control by an inspector or his agent and a sealed sample thereof given to him. [1961 c 11 § 15.32.540. Prior: 1907 c 234 § 11; RRS § 6277.]

**15.32.550 Imitation seal, altering samples, violations—Penalty.** Any person who makes or causes to be made, or uses or possesses, an imitation of a seal used by a person engaged in the inspection of milk, or who alters or tampers with a sample of milk or milk products taken or sealed by an inspector, shall be punished by a fine of one hundred dollars or imprisonment for not less than three nor more than six months. [1961 c 11 § 15.32.550. Prior: 1907 c 234 § 9; RRS § 6275.]

**15.32.560 Connivance by inspector or agent—Penalty.** An inspector or his agent who wilfully connives at or assents to a violation of any provision of RCW 15.32.510 to 15.32.550, inclusive, or a person who interferes with an inspector or his agent in the performance of his duties, shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment for not less than thirty nor more than sixty

days. [1961 c 11 § 15.32.560. Prior: 1907 c 234 § 10; RRS § 6276.]

**15.32.570 Quarantine, removal of container from.** No person shall remove from a place under quarantine a container which has been or is to be used to contain milk, skimmed milk, buttermilk, cream, ice cream, or ice milk, without permission of the health officer in charge. [1961 c 11 § 15.32.570. Prior: 1919 c 192 § 56; RRS § 6218.]

**15.32.580 Dairy technician's license—Required of testers, samplers, graders, and pasteurizers—Examinations.** Any person who tests milk or cream or the fluid derivatives thereof, purchased, received, or sold on the basis of milk fat, nonfat milk solids, or other components contained therein, or who takes samples of milk or cream or fluid derivatives thereof, on which sample tests are to be made as a basis of payment, or who grades, weighs, or measures milk or cream or the fluid derivatives thereof, the grade, weight, or measure to be used as a basis of payment, or who operates equipment wherein milk or products thereof are pasteurized must hold a dairy technician's license. Such license shall be limited to those functions which the licensee has been found qualified by examination to perform. Before issuing the license the director shall examine the applicant as to his qualifications for the functions for which application has been made. [1963 c 58 § 6; 1961 c 11 § 15.32.580. Prior: 1943 c 90 § 4; 1927 c 192 § 8; 1923 c 27 § 7; 1919 c 192 § 26; Rem. Supp. 1943 § 6189.]

**15.32.582 Dairy technician's license—Application for license—Temporary permits.** Application for a license as a dairy technician to perform one or more of the functions of a tester, sampler, weigher, grader, or pasteurizer shall be made upon forms to be provided and furnished by the director, and shall be filed with the department. The director may issue a temporary permit to the applicant to perform one or more of the functions of a tester, sampler, weigher, grader, or pasteurizer for such period as may be prescribed and stated in said permit, not to exceed sixty days, but such permit shall not be renewed so as to extend the period beyond sixty days. [1963 c 58 § 7; 1961 c 11 § 15.32.582. Prior: 1943 c 90 § 5; 1927 c 192 § 9; 1919 c 192 § 27; Rem. Supp. 1943 § 6190.]

**15.32.584 Dairy technician's license—Fees—Duration and renewal—Denial, suspension, revocation.** The initial application for a dairy technician's license shall be accompanied by the payment of a license fee of ten dollars. Where such license is renewed and it is not necessary that an examination be given the fee for renewal of the license shall be five dollars. All dairy technicians' licenses shall be renewed on or before January 1, 1964 and every two years thereafter. The director is authorized to deny, suspend, or revoke any dairy technician's license subject to a hearing if the licensee has failed to comply with the provisions of this chapter, or has exhibited in the discharge of his functions any gross carelessness or lack of qualification, or has failed to

comply with the rules and regulations adopted under authority of this chapter. All hearings for the suspension, denial, or revocation of such license shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning contested cases. [1963 c 58 § 8; 1961 c 11 § 15.32.584. Prior: 1943 c 90 § 6; 1927 c 192 § 10; 1919 c 192 § 28; Rem. Supp. 1943 § 6191.]

**15.32.590 Tests, etc., by licensed dairy technicians—Records—Inspection of.** Licensed dairy technicians shall personally take all samples, conduct all tests, and determine all weights and grades of milk or cream bought, sold, or delivered upon the basis of weight or grade or on the basis of the milk fat, nonfat milk solids, or other components contained therein. Each licensee shall keep a carbon copy of every original report of each test, weight, or grade made by him for a period of two months after making same, in a locked container, but subject to inspection at all times by the director or his agent. [1963 c 58 § 9; 1961 c 11 § 15.32.590. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188, part.]

*Penalty for violation of this section: RCW 15.32.610.*

**15.32.600 Dairy technicians—Personal responsibility.** Each dairy technician shall be personally responsible to any person injured through his careless, negligent, or unskillful operation, or any fraudulent, intentionally inaccurate, or manipulated report. [1963 c 58 § 10; 1961 c 11 § 15.32.600. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188, part.]

**15.32.610 Employment of unlicensed person as dairy technician—Offenses concerning examination of reports—Penalty.** No person shall employ a tester, sampler, weigher, grader, or pasteurizer who is not licensed as a dairy technician; or refuse to allow or fail to assist the director or his agent in the examination of the reports referred to in RCW 15.32.590.

Whoever violates the provisions of this section or RCW 15.32.590 may be fined not less than twenty-five nor more than one hundred dollars, and his license hereunder revoked. [1963 c 58 § 11; 1961 c 11 § 15.32.610. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188.]

**15.32.620 Sample taking—Thorough mixing—Unfair samples.** Before taking a sample of milk or cream for testing, weighing or grading the licensee shall thoroughly mix the shipment to be sampled until it is of uniform consistency. The shipment of each individual shall be treated separately, and a sample shall be taken from each container in the shipment.

No unfair, fraudulent or manipulated sample shall be taken or returned. [1961 c 11 § 15.32.620. Prior: (i) 1927 c 192 § 5; 1919 c 192 § 21; RRS § 6184. (ii) 1929 c 213 § 4; 1919 c 192 § 23; RRS § 6186.]

**15.32.630 Adoption of rules relating to analysis of milk or cream or fluid derivatives thereof.** The director may, by rule, establish and/or amend methods, procedures, equipment, and standards to be used and followed in the grading, sampling, weighing, measuring, or testing of milk or cream or the fluid derivatives thereof when the results of such functions are to be used as the basis of payment for milk or cream or the fluid derivatives thereof. Such methods, procedures, equipment, and standards shall conform insofar as practicable with the methods, procedures, equipment, and standards in the latest edition of "Standard Methods for the Analysis of Dairy Products" recommended by the American public health association: *Provided*, That nothing contained in this section shall be construed as prohibiting any other methods, procedures, equipment, or standards which have been demonstrated to be accurate and efficient and have been approved by the director.

The adoption of all rules provided for in this section shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning the adoption of rules. [1963 c 58 § 12; 1961 c 11 § 15.32.630. Prior: 1927 c 192 § 4; 1919 c 192 § 17; RRS § 6180.]

**15.32.660 Inspection, testing, by director, supervisor, inspectors.** All duties and powers of inspection and testing conferred or directed by this chapter may be exercised by the director, supervisor, or an inspector of the department. [1961 c 11 § 15.32.660. Prior: 1927 c 192 § 15, part; 1919 c 192 § 39, part; RRS § 6201, part.]

**15.32.670 Right of entry—Samples—Duplicate to owner.** The director and his deputies may enter any place or building where he has reason to believe that a dairy product or imitation thereof is kept, made, sold, or offered for sale, and open any receptacle containing or supposed to contain any such article, and examine the contents thereof and he may take the article or a sample thereof for analysis. If the person from whom the sample is taken requests him to do so, he shall at the same time and in his presence seal up two samples of the article taken, one of which shall be for examination or analysis, and the other shall be delivered to the person from whom the article is taken. [1961 c 11 § 15.32.670. Prior: 1899 c 43 § 12; 1895 c 45 § 13; RRS § 6257.]

**15.32.680 Possession of prohibited article as evidence.** Possession of an article the sale of which is prohibited by this chapter shall be prima facie evidence that it is kept in violation of the provisions hereof, and the director may seize and take possession of it, and upon an order of court, he shall sell it for any purpose other than human food. [1961 c 11 § 15.32.680. Prior: 1899 c 43 § 28; RRS § 6250.]

**15.32.690 Annual statistical report.** On or before January 1st of each year, or oftener, the director shall mail to every owner or operator of a creamery, milk plant, milk condensing factory, factory of milk products, or cheese factory, and to every milk vendor and

milk dealer, blanks for reporting milk and milk products production statistics. Within thirty days thereafter said reports properly filled out and signed by such persons, showing the amount of milk and milk products received, produced or distributed during the period fixed by the director, shall be returned to him. [1961 c 11 § 15.32.690. Prior: 1955 c 238 § 78; prior: (i) 1943 c 90 § 1, part; 1933 c 188 § 1, part; 1929 c 213 § 1, part; 1927 c 192 § 1, part; 1919 c 192 § 1, part; Rem. Supp. 1943 § 6164, part. (ii) 1929 c 213 § 6, part; 1927 c 192 § 16, part; 1921 c 104 § 3, part; 1919 c 192 § 41, part; RRS § 6203, part.]

**15.32.692 Monthly reports of milk processors—Contents.** All milk processors, as the term "processor" is defined in RCW 15.44.010, not within a federal order area, shall file with the department of agriculture of the state of Washington, on or before the fifteenth day of each month, a report, on forms supplied by the department of agriculture, showing the amount of milk purchased during the preceding month, and the percentage of such milk purchased or produced by the processor, if such is the case, that was used in each of the dairy products produced during the preceding month. If any milk was disposed of other than by producing it into dairy products during the preceding month, the report shall show the disposition of such milk. The report required by this section shall be verified under oath, certifying to the correctness and the completeness of the report. [1961 c 11 § 15.32.692. Prior: 1955 c 343 § 1. Formerly RCW 15.34.010.]

**15.32.694 Monthly reports of milk processors—Information not to be divulged—Penalty.** The report required by RCW 15.32.692 shall not be a public record, and it shall be a misdemeanor for any person to divulge any information given in such report which would reveal the business operation of the person making the report; except that nothing contained in this section shall be construed to prevent or make unlawful the use of information concerning the business operation of a person in any action, suit or proceeding instituted under the authority of RCW 15.32.692 through 15.32.698. [1961 c 11 § 15.32.694. Prior: 1955 c 343 § 2. Formerly RCW 15.34.020.]

**15.32.696 Annual publication of information by department.** The department of agriculture shall publish at least once annually information concerning the production, sales and volume of milk processed into dairy products by processors in this state. [1961 c 11 § 15.32.696. Prior: 1955 c 343 § 3. Formerly RCW 15.34.030.]

**15.32.698 Penalties.** The first violation of the provisions of RCW 15.32.692 or 15.32.694 shall be a misdemeanor. A second violation and succeeding violations shall be a gross misdemeanor. [1961 c 11 § 15.32.698. Prior: 1955 c 343 § 4. Formerly RCW 15.34.040.]

**15.32.700 Mutilation of brands, etc., prohibited.** No person shall mutilate or remove any mark, brand, label, or other designation required by this chapter from any

product, with intent to deceive or in violation of any provision hereof. [1961 c 11 § 15.32.700. Prior: 1919 c 192 § 72; RRS § 6234.]

**15.32.710 License fee, sale proceeds—Monthly remittance.** All moneys received for licenses or from the sale of articles confiscated under this chapter shall be paid on the first of each month to the state treasurer to be placed in the general fund. [1961 c 11 § 15.32.710. Prior: 1899 c 43 § 27; RRS § 6249.]

**15.32.720 Fines—Distribution—Remittance of justice court fees, fines, penalties and forfeitures.** One-half of all fines collected from prosecutions under this chapter shall be paid to the state and the remainder to the county in which the conviction is had: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 12; 1961 c 11 § 15.32.720. Prior: 1919 c 192 § 82; RRS § 6244.]

**15.32.730 Unlawful interference with official.** It shall be unlawful to interfere with or obstruct any person in the performance of his official duties under this chapter. [1961 c 11 § 15.32.730. Prior: 1919 c 192 § 76; RRS § 6238.]

**15.32.740 Unlawful conduct, what is—Penalty.** The doing of any act prohibited or the failure to do any act required by this chapter or any rule or regulation issued hereunder, when not otherwise provided, shall constitute a misdemeanor. [1961 c 11 § 15.32.740. Prior: (i) 1919 c 192 § 43; RRS § 6205. (ii) 1919 c 192 § 77; RRS § 6239. (iii) 1915 c 101 § 7; RRS § 6265.]

**15.32.750 Duty of prosecuting attorney.** At the request of the director or his representative, the prosecuting attorney shall prosecute all criminal actions under this chapter within his county. [1961 c 11 § 15.32.750. Prior: 1919 c 192 § 78; RRS § 6240.]

**15.32.755 Injunctions authorized—Venue.** The director may bring an action to enjoin the violation of any provision of this chapter or rules adopted hereunder in the superior court of the county in which the defendant resides or maintains his principal place of business, notwithstanding the existence of any other remedy at law. [1963 c 58 § 14.]

**15.32.760 Carrier employees to aid director—Violation, penalty.** Every employee of a common carrier shall render to the director and his authorized representatives all possible assistance in locating any article named in this chapter which has come into its possession. Failure to do so shall be punishable by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment for not less than one month nor more than six months, or by both fine and imprisonment. [1961 c 11 § 15.32.760. Prior: 1899 c 43 § 22; RRS § 6258.]

**15.32.770 Court jurisdiction.** Any superior court and any municipal court or justice of the peace shall have jurisdiction of all prosecutions and all proceedings for forfeiture and sale under this chapter. [1961 c 11 § 15.32.770. Prior: 1919 c 192 § 79; RRS § 6241.]

**15.32.780 Unlawful price fixing—Exception.** No two or more persons shall by agreement or understanding, tacit or otherwise, fix or attempt to fix the price at which butter, cheese, milk, or other products mentioned in this chapter shall be bought or sold; except that the provisions of this section shall not apply to ordinary sales between buyer and seller. [1961 c 11 § 15.32.780. Prior: 1919 c 192 § 80; RRS § 6242.]

**15.32.790 Deceit relative to milk and cream measures, grades, etc.** No person shall, with intent to deceive or defraud, manipulate, or alter the measure, grade, test, or weight of any milk or cream; or make any false or inaccurate statement relative to measure, grade, test, or weight thereof; or use any measure or grading or testing apparatus which does not comply with the standards prescribed in this chapter or which has been condemned by the director. [1961 c 11 § 15.32.790. Prior: 1927 c 192 § 6; 1919 c 192 § 22; RRS § 6185.]

**15.32.900 Declaration of police power.** It is hereby declared that this chapter is enacted as an exercise of the police power of the state of Washington for the preservation of the public health and each and every section thereof shall be construed as having been intended to effect such purpose and not as having been intended to affect any regulation or restraint of commerce between the several states which may by the Constitution of the United States of America have been reserved to the congress thereof. [1961 c 11 § 15.32.900. Prior: 1919 c 192 § 83; RRS § 6245.]

**15.32.910 Chapter cumulative.** Nothing in this chapter shall be construed as affecting or being intended to effect a repeal of chapter 69.04 RCW or RCW 69.40.010 through 69.40.025, or of any of such sections, or of any part or provision of any such sections, and if any section or part of a section in this chapter shall be found to contain, cover or effect any matter, topic or thing which is also contained in, covered in or effected by said sections, or by any of them, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers and duties herein prescribed shall be construed to be additional to those prescribed in such sections and not in substitution therefor. And nothing in this chapter shall be construed to forbid the importation, transportation, manufacture, sale, or possession of any article of food which is not prohibited from interstate commerce by the laws of the United States or rules or regulations lawfully made thereunder, if there be a standard of quality, purity and strength therefor authorized by any law of this state, and such article comply therewith and be not misbranded. [1961 c 11 § 15.32.910. Prior: 1919 c 192 § 88; RRS § 6266.]

## Chapter 15.35 WASHINGTON STATE MILK POOLING ACT

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**15.35.010 Short title.** This chapter may be known and cited as the Washington state milk pooling act to provide for equitable pooling among producers. [1971 ex.s. c 230 § 1.]

**15.35.020 Declaration of public interest.** The production and distribution of milk is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted for the purpose of protecting the health and welfare of the people of this state. [1971 ex.s. c 230 § 2.]

**15.35.030 Declaration of public interest—Additional declaration.** It is hereby declared that milk is a necessary article of food for human consumption; that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare. [1971 ex.s. c 230 § 3.]

**15.35.040 Authority to establish marketing areas with pooling arrangements.** It is recognized by the legislature that conditions within the milk industry of this state are such that it may be necessary to establish marketing areas wherein pooling arrangements between producers are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as are herein prescribed, after investigations and public hearings, to prescribe such marketing areas and modify the same when advisable or necessary. [1971 ex.s. c 230 § 4.]

**15.35.050 Statements as legislative determination.** The statement of facts, policy, and application of this chapter as set forth in RCW 15.35.010 through 15.35.040 is hereby declared a matter of legislative determination. [1971 ex.s. c 230 § 5.]

**15.35.060 Purposes.** The purposes of this chapter are to:

(1) Authorize and enable the director to prescribe marketing areas and to establish pooling arrangements which are necessary due to varying factors of costs of production, health regulations, transportation, and other factors in said marketing areas of this state;

(2) Authorize and enable the director to formulate marketing plans subject to the provisions of this chapter with respect to the contents of such pooling arrangements and declare such plans in effect for any marketing area;

(3) Provide funds for administration and enforcement of this chapter by assessments to be paid by producers. [1971 ex.s. c 230 § 6.]

**15.35.070 Powers conferred to be liberally construed—Monopoly prohibited.** It is the intent of the legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of milk. [1971 ex.s. c 230 § 7.]

**15.35.080 Definitions.** For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department or his duly appointed representative;

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural as the case may be;

(4) "Market" or "marketing area" means any geographical area within the state comprising one or more counties or parts thereof, or one or more cities or towns or parts thereof where marketing conditions are substantially similar and which may be designated by the director as one marketing area;

(5) "Milk" means all fluid milk as defined in chapters 15.32 and 15.36 RCW as enacted or hereafter amended and rules adopted thereunder;

(6) "Milk products" includes any product manufactured from milk or any derivative or product of milk;

(7) "Milk dealer" means any person engaged in the handling of milk in his capacity as the operator of a milk plant, a country plant or any other plant from which milk or milk products are disposed of to any place or establishment within a marketing area other than to a plant in such marketing area;

(8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of chapter 15.36 RCW as enacted or hereafter amended;

(9) "Classification" means the classification of milk into classes according to its utilization by the department;

(10) "Producer-dealer" means a producer who engages in the production as well as the distribution of milk products. [1971 ex.s. c 230 § 8.]

**15.35.090 Uniformity of milk control between states as goal.** The director shall in carrying out the provisions of this chapter and any marketing plan thereunder confer with the legally constituted authorities of other states of the United States, and the United States department of agriculture, for the purpose of seeking uniformity of milk control with respect to milk coming in to the state and going out of the state in interstate commerce with a view to accomplishing the purposes of this chapter, and may enter into a compact or compacts which will insure a uniform system of milk control between this state and other states. [1971 ex.s. c 230 § 9.]

**15.35.100 Director's authority—Subpoena power—Rules and regulations.** Subject to the provisions of this chapter and the specific provisions of any marketing plan established thereunder, the director is hereby vested with the authority:

(1) To investigate all matters pertaining to the production, processing, storage, transportation, and distribution of milk and milk products in the state, and including but not limited to the authority to:

(a) prescribe the method and time of payment to be made to producers by dealers in accordance with a marketing plan for milk;

(b) determine what constitutes a natural milk market area;

(c) determine by using uniform rules, what portion of the milk produced by each producer subject to the provisions of a marketing plan shall be marketable in fluid form and what proportion so produced shall be considered as surplus; such determination shall also apply to milk dealers who purchase or receive milk, for sale or distribution in such marketing area, from plants whose producers are not subject to such pooling arrangements;

(d) provide for the pooling and averaging of all returns from the sales of milk in a designated market area, and the payment to all producers of a uniform pool price for all milk so sold;

(e) provide and establish distributor pools or market pools for a designated market area with such rules and regulations as the director may adopt;

(f) employ an executive officer, who shall be known as the milk pooling administrator;

(g) employ such persons as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

(h) determine by rule, what portion of any increase in the demand for fluid milk subject to a pooling arrangement and marketing plan providing for quotas shall be assigned new producers or existing producers.

(2) To issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records anywhere in the state in any hearing affecting the authority of privileges granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW as enacted or hereafter amended;

(3) To make, adopt, and enforce all rules necessary to carry out the purpose of this chapter subject to the provisions of chapter 34.04 RCW concerning the adoption of rules, as enacted or hereafter amended: *Provided*, That nothing contained in this chapter shall be construed to abrogate or affect the status, force, or operation of any provision of the public health laws enacted by the state or any municipal corporation or the public service laws of this state. [1971 ex.s. c 230 § 10.]

**15.35.110 Referendum on establishing or discontinuing market area pooling arrangement.** (1) The director, either upon his own motion or upon petition by ten percent of the producers in any proposed area, shall conduct a hearing to determine whether to establish or discontinue a market area pooling arrangement. Upon determination by the director that in order to satisfy the purposes of this chapter a pooling arrangement should either be established or terminated, a referendum of affected individual producers shall be conducted by the department.

(a) Sixty-six and two-thirds percent of the producers that vote must be in favor of establishing a market area and pooling plan before it can be put into effect by the director. The director, within one hundred twenty days from the date the results of the referendum are filed with the secretary of state, shall establish a market pool in the market area, as provided for in this chapter.

(b) If fifty-one percent of those voting representing fifty-one percent of the milk produced in the market area vote to terminate a pooling plan, the director, within one hundred twenty days, shall terminate all the provisions of said market area and pooling arrangement. [1971 ex.s. c 230 § 11.]

**15.35.120 Qualifications for producers to sign petitions or vote in referendums.** (1) The producers qualified to sign a petition, or to vote in any referendum concerning a market pool, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The director is authorized during business hours to review the books and records of handlers to obtain a

list of the producers qualified to sign petitions or to vote in referendums. [1971 ex.s. c 230 § 12.]

**15.35.130 Form of producer petitions.** Petitions filed with the director by producers shall:

(1) Consist of one or more pages, each of which is dated at the bottom. The date shall be inserted on each sheet prior to, or at the time the first signature is obtained on each sheet. The director shall not accept a sheet on which such date is more than sixty days, prior to the time it is filed with the director. After a petition is filed, additional pages may be filed if time limits have not expired.

(2) Contain wording at the top of each page which clearly explains to each person whose signature appears thereon the meaning and intent of the petition. Such wording shall also clearly indicate to the director if it is in reference to a request for public hearing, exactly what matters are to be studied and desired. Similar information must be directed to the director if the matter relates to a referendum. The director has the authority to clarify wording from a petition before making it a part of a referendum.

No informalities or technicalities in the conduct of a referendum, or in any matters relating thereto, shall invalidate any referendum if it is fairly and reasonably conducted by the director. [1971 ex.s. c 230 § 13.]

**15.35.140 Director to establish systems within market areas.** (1) The director shall establish a system of pooling of all milk used in each market area established under RCW 15.35.110.

(2) Thereafter the director shall establish a system in each market area for the equalization of returns for all quota milk and all surplus over quota milk whereby all producers selling milk to milk dealers or delivering milk in such market area, will receive the same price for all quota milk and all surplus over quota milk, except that any premium paid to a producer by a dealer above established prices shall not be considered in determining average pool prices. [1971 ex.s. c 230 § 14.]

**15.35.150 Determination of producer's quota.** (1) Under a market pool and as used in this section, "quota" means a producer's portion of the total sales of class I milk in a market area plus a reserve determined by the director.

(2) The director shall in each market area subject to a market plan establish each producer's initial quota in the market area. Such initial quota shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.04 RCW. In making this determination, consideration shall be given to a history of the producer's production record.

In any system of establishing quotas, provision shall be made for new producers to qualify for allocation of quota in a reasonable proportion and for old and new producers to participate in any new class I sales in a reasonable proportion.

All subsequent changes or new quota issued shall be determined by the department after due notice and the



opportunity for a hearing as provided in chapter 34.04 RCW. [1971 ex.s. c 230 § 15.]

**15.35.160 Contracts, rights and powers of associations not affected.** No provision of this chapter shall be deemed or construed to:

(1) Affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation;

(2) Impair or affect any contract which any such cooperative association has with milk dealers or others which are not in violation of this chapter;

(3) Affect or abridge the rights and powers of any such cooperative association conferred by the laws of this state under which it is incorporated. [1971 ex.s. c 230 § 16.]

**15.35.170 Quotas—Transfer of—Limitations.** Quotas provided for in this chapter may not in any way be transferred without the consent of the director. Regulations regarding transfer of quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.04 RCW. Any contract for the transfer of quotas, unless the transfer has previously been approved by the director, shall be null and void. The director shall make rules and regulations to preclude any person from using a corporation as a device to evade the provisions of this section. The quotas assigned to any corporation shall become null and void as of any time the corporation does not own the means of production to which the quotas pertain. Quotas shall in no event be considered as property not to be taken or abolished by the state without compensation. [1971 ex.s. c 230 § 17.]

**15.35.180 Records of milk dealers and cooperatives, inspection and audit of.** The director shall examine and audit not less than one time each year or at any other such time he considers necessary, the books and records, and may photostat such books, records, and accounts of milk dealers and cooperatives licensed or believed subject to license under this chapter for the purpose of determining:

(1) How payments to producers for the milk handled are computed and whether the amount of such payments are in accordance with the applicable marketing plan;

(2) If any provisions of this chapter affecting such payments directly or indirectly have been or are being violated.

No person shall in any way hinder or delay the director in conducting such examination. [1971 ex.s. c 230 § 18.]

**15.35.190 Records necessary for milk dealers.** All milk dealers subject to the provisions of this chapter shall keep the records as deemed necessary by the director. [1971 ex.s. c 230 § 19.]

**15.35.200 Verified reports of milk dealers.** Each milk dealer subject to the provisions of this chapter shall from time to time, as required by rule of the director,

make and file a verified report, on forms prescribed by the director, of all matters on account for which a record is required to be kept, together with such other information or facts as may be pertinent and material within the scope of the purpose of this chapter. Such reports shall cover a period specified in the order, and shall be filed within a time fixed by the director. [1971 ex.s. c 230 § 20.]

**15.35.210 Milk dealer license—Required.** It shall be unlawful for any milk dealer subject to the provisions of a marketing plan to handle milk subject to the provisions of such marketing plan without first obtaining an annual license from the director for each separate place of business where such milk is received or sold. Such license shall be in addition to any other license required by the laws of this state: *Provided*, That the provisions of this section shall not become effective for a period of sixty days subsequent to the inception of a marketing plan in any marketing area prescribed by the director. [1971 ex.s. c 230 § 21.]

**15.35.220 Milk dealer license—Application for—Contents.** Application for a license to act as a milk dealer shall be on a form prescribed by the director and shall contain, but not be limited to, the following:

(1) The nature of the business to be conducted;

(2) The full name and address of the person applying for the license if an individual; and if a partnership, the full name and address of each member thereof; and if a corporation, the full name and address of each officer and director;

(3) The complete address at which the business is to be conducted;

(4) Facts showing that the applicant has adequate personnel and facilities to properly conduct the business of a milk dealer;

(5) Facts showing that the applicant has complied with all the rules prescribed by the director under the provisions of this chapter;

(6) Any other reasonable information the director may require. [1971 ex.s. c 230 § 22.]

**15.35.230 Milk dealer license—Fees—Additional assessment for late renewal.** (1) Application for each milk dealer's license shall be accompanied by an annual license fee of five dollars.

(2) If an application for the renewal of a milk dealer's license is not filed on or before the first day of an annual licensing period a fee of three dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional assessment shall not apply if the applicant furnishes an affidavit that he has not acted as a milk dealer subsequent to the expiration of his prior license. [1971 ex.s. c 230 § 23.]

**15.35.240 Milk dealer license—Denial, suspension or revocation of—Grounds.** The director may deny, suspend, or revoke a license upon due notice and an opportunity for a hearing as provided in chapter 34.04

RCW, concerning contested cases, as enacted or hereafter amended, or rules adopted thereunder by the director, when he is satisfied by a preponderance of the evidence of the existence of any of the following facts:

(1) A milk dealer has failed to account and make payments without reasonable cause, for milk purchased from a producer subject to the provisions of this chapter or rules adopted hereunder;

(2) A milk dealer has committed any act injurious to the public health or welfare or to trade and commerce in milk;

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the director of his inability or unwillingness to properly conduct the business of handling or selling milk, or to satisfy the director of his intent to deceive or defraud producers subject to the provisions of this chapter or rules adopted hereunder;

(4) A milk dealer has rejected without reasonable cause any milk purchased or has rejected without reasonable cause or reasonable advance notice milk delivered in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated;

(5) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been adjudged bankrupt or where a money judgment has been secured against him upon which an execution has been returned wholly or partially satisfied;

(6) Where the milk dealer has been a party to a combination to fix prices, contrary to law; a cooperative association organized under chapter 24.32 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly;

(7) Where there has been a failure either to keep records or to furnish statements or information required by the director;

(8) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular;

(9) Where the applicant is a partnership or a corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act for which a license may be denied, suspended, or revoked, pursuant to the provisions of this chapter or rules adopted hereunder;

(10) Where the milk dealer has violated any provisions of this chapter or rules adopted hereunder;

(11) Where the milk dealer has ceased to operate the milk business for which the license was issued. [1971 ex.s. c 230 § 24.]

**15.35.250 Assessments on producers—Amount—Collection—Penalty for noncollection—Court action.** There is hereby levied upon all milk sold or received in any marketing area subject to a marketing plan established under the provisions of this chapter an assessment, not to exceed five cents per one hundred pounds of all such milk, to be paid by the producer of such milk. Such assessment shall be collected by the

first milk dealer who receives or handles such milk from any producer or his agent subject to such marketing plan and shall be paid to the director.

The amount to be assessed and paid to the director under any marketing plan shall be determined by the director within the limits prescribed by this section and shall be determined according to the necessities required to carry out the purpose and provisions of this chapter under any such marketing plan.

Upon the failure of any dealer to withhold out of amounts due to or to become due to a producer at the time a dealer is notified by the director of the amounts to be withheld and upon failure of such dealer to pay such amounts, the director subject to the provisions of RCW 15.35.260, may revoke the license of the dealer required by RCW 15.35.230. The director may commence an action against the dealer in a court of competent jurisdiction in the county in which the dealer resides or has his principal place of business to collect such amounts. If it is determined upon such action that the dealer has wrongfully refused to pay the amounts the dealer shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the director as determined by the court. If the director's contention in such action is not sustained, the director shall pay to the dealer all costs and disbursements of the action as determined by the court. [1971 ex.s. c 230 § 25.]

**15.35.260 Records and reports of licensees for assessment purposes.** Each licensee, in addition to other records required under the provisions of this chapter, shall keep such records and make such reports as the director may require for the purpose of computing payments of assessments by such licensee. [1971 ex.s. c 230 § 26.]

**15.35.270 Assessment due date.** All assessments on milk subject to the provisions of this chapter and a marketing order shall be paid to the director on or before the twentieth day of the succeeding month for the milk which was received or handled in the previous month. [1971 ex.s. c 230 § 27.]

**15.35.280 Separate account for each marketing plan—Deductions for departmental costs.** The director shall establish a separate account for each marketing plan established under the provisions of this chapter, and all license fees and assessments collected under any such marketing plan shall be deposited in its separate account to be used only for the purpose of carrying out the provisions of such marketing plan: *Provided*, That the director may deduct from each such account the necessary costs incurred by the department. Such costs shall be prorated among the several marketing plans if more than one is in existence under the provisions of this chapter. [1971 ex.s. c 230 § 28.]

**15.35.290 Court actions to implement.** In addition to any other remedy provided by law, the director in the name of the state shall have the right to sue in any court of competent jurisdiction for the recovery of any

moneys due it from any persons subject to the provisions of this chapter and shall also have the right to institute suits in equity for injunctive relief and for purpose of enforcement of the provisions of this chapter. [1971 ex.s. c 230 § 29.]

**15.35.300 General penalty—Misdemeanor—Exception.** Any violation of this chapter and/or rules and regulations adopted thereunder shall constitute a misdemeanor: *Provided*, That this section shall not apply to retail purchasers who purchase milk for domestic consumption. [1971 ex.s. c 230 § 30.]

**15.35.310 Certain producers exempt.** The provisions of this chapter shall not apply to a producer who acts as a milk dealer only for milk he produces on his own dairy farm from cows which he owns or is purchasing: *Provided*, That such producer shall lease or own his processing facilities, or that he shall not have more than seventy-five percent of the milk he produces processed, bottled, or packaged by another milk dealer or producer who acts as a dealer: *Provided further*, That such milk producer shall remain exempt from the provisions of this chapter if he purchases not more than ten percent of the milk he handled from another producer or milk dealer and if he sells any excess production from his farm or farms to the pool at the lowest use classification price. [1971 ex.s. c 230 § 31.]

**15.35.900 Severability—1971 ex.s. c 230.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances, is not affected. [1971 ex.s. c 230 § 32.]

### Chapter 15.36 FLUID MILK

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*Fluid milk, etc., containers, units: Chapter 19.94 RCW.*

**15.36.011 Definitions and standards, establishment and amendment by rule—Milk and milk products—Products made to resemble or imitate dairy products—Labels.** The director of agriculture, by rule, may establish and/or amend definitions and standards for milk and milk products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for milk and milk products promulgated by the secretary of the United States department of health, education and welfare. The director of agriculture, by rule, may likewise establish and/or amend definitions and standards for products whether fluid, powdered or frozen, compounded or manufactured to resemble or in semblance or imitation of genuine dairy products as defined under the provisions of RCW 15.32.120, 15.36.011, 15.36.075, 15.36.540 and 15.36.600 or chapter 15.32 RCW as enacted or hereafter amended. Such products made to resemble or in semblance or imitation of genuine dairy products shall conform with all the provisions of chapter 15.38 RCW and be made wholly of nondairy products.

All such products compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product shall set forth on the container or labels the specific generic name of each ingredient used.

In the event any product compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product contains vegetable fat or oil, the generic name of such fat or oil shall be set forth on the label. If a blend or variety of oils is used, the ingredient statement shall contain the term "vegetable oil" in the appropriate place in the ingredient statement, with the qualifying phrase following the ingredient statement, such as "vegetable oils are soybean, cottonseed and coconut oils" or "vegetable oil, may be cottonseed, coconut or soybean oil."

The labels or containers of such products compounded or manufactured to resemble or in semblance or imitation of genuine dairy products shall not use dairy terms or words or designs commonly associated with dairying or genuine dairy products, except as to the extent that such words or terms are necessary to meet legal requirements for labeling: *Provided*, That the term "nondairy" may be used as an informative statement.

The director may adopt any other rules necessary to carry out the purposes of chapters 15.36 and 15.38 RCW: *Provided*, That these rules shall not restrict the display or promotion of products covered under this section. The adoption of all rules provided for in this section shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning the adoption of rules. [1969 ex.s. c 102 § 1.]

**Repealed definitions constitute rules:** "The definitions constituting section 15.36.010, chapter 11, Laws of 1961 and RCW 15.36.010 as hereinafter in section 7 of this 1969 amendatory act repealed are

hereby constituted and declared to be operative and to remain in force as the rules of the department of agriculture until such time as amended, modified, or revoked by the director of agriculture." [1969 ex.s. c 102 § 2.]

**15.36.020 Definitions—"Pasteurization".** "Pasteurization," "pasteurize" and similar terms, refer to the process of heating every particle of milk or milk products to at least one hundred forty-three degrees Fahrenheit, and holding at such temperature for at least thirty minutes, or to at least one hundred sixty-one degrees Fahrenheit, and holding at such temperature for at least fifteen seconds in approved and properly operated equipment under the provisions of this chapter: *Provided*, That nothing contained in this definition shall be construed as disbaring any other process which has been demonstrated to be equally efficient and which is approved by the director. [1961 c 11 § 15.36.020. Prior: 1955 c 238 § 3; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

**15.36.030 Definitions—"Adulterated and misbranded milk and milk products".** "Adulterated and misbranded milk and milk products." Any milk to which water has been added, or any milk or milk product which contains any unwholesome substance, or which if defined in this chapter does not conform with its definition, shall be deemed adulterated. Any milk or milk products which carries a grade label unless such grade label has been awarded by the director and not revoked, or which fails to conform in any other respect with the statements on the label, shall be deemed to be misbranded. [1961 c 11 § 15.36.030. Prior: 1955 c 238 § 4; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

**15.36.040 Definitions—"Milk producer"—"Milk distributor"—"Dairy"—"Milk hauler"—"Milk plant".** A "milk producer" is any person or organization who owns or controls one or more cows a part or all of the milk or milk products from which is sold or offered for sale.

A "milk distributor" is any person who offers for sale or sells to another any milk or milk products for human consumption as such and shall include a milk producer selling or offering for sale milk or milk products at the dairy farm.

A "dairy" or "dairy farm" is any place or premises where one or more cows are kept, a part or all of the milk or milk products from which is sold or offered for sale.

A "milk hauler" is any person, other than a milk producer or a milk plant employee, who transports milk or milk products to or from a milk plant or a collecting point.

A "milk plant" is any place, premises or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, or prepared for distribution, except an establishment where milk or milk products are sold at retail only. [1961 c 11 § 15.36.040. Prior: 1955 c 238 § 5; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

**15.36.050 Definitions**—"Average" counts, time, temperature. "Average bacterial plate count," and the "average direct microscopic count," mean the logarithmic average, and "average reduction time" and "average cooling temperature" mean the arithmetic average of the respective results of the last four consecutive samples, taken upon separate days. [1961 c 11 § 15.36.050. Prior: 1955 c 238 § 6; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

**15.36.060 Definitions**—"Person", "director", "health officer", "and/or". The word "person" means any individual, partnership, firm, corporation, company, trustee, or association.

"Director" means the director of agriculture of the state of Washington or his duly authorized representative.

"Health officer" means the county or city health officer as defined in Title 70, or his authorized representatives.

Where the term "and/or" is used "and" shall apply where possible, otherwise "or" shall apply. [1961 c 11 § 15.36.060. Prior: 1955 c 238 § 7; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

**15.36.070 Sale of adulterated, misbranded, or ungraded milk or milk products prohibited.** No person shall produce, sell, offer, or expose for sale, or have in possession with intent to sell, in the fluid state for direct consumption as such, any milk or milk product which is adulterated, misbranded, or ungraded. It shall be unlawful for any person, elsewhere than in a private home, to have in possession any adulterated, misbranded, or ungraded milk or milk products: *Provided*, That in an emergency the sale of ungraded milk or milk products may be authorized by the director, in which case they shall be labeled "ungraded."

Adulterated, misbranded, and/or ungraded milk or milk products may be impounded and disposed of by the director. [1961 c 11 § 15.36.070. Prior: 1949 c 168 § 2; Rem. Supp. 1949 § 6266-31.]

**15.36.075 Milk not deemed adulterated if added ingredient is approved by rule or regulation.** For the purpose of this chapter, no fluid milk or fluid milk product shall be deemed to be adulterated if such fluid milk or fluid milk product contains an added ingredient or substance in the amount and kind prescribed or allowed by a rule or regulation promulgated by the director subsequent to a public hearing pursuant to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended. [1969 ex.s. c 102 § 3.]

**15.36.080 Permits.** It shall be unlawful for any person to transport, or to sell, or offer for sale, or to have in storage where milk or milk products are sold or served, any milk or milk product defined in this chapter, who does not possess an appropriate permit from the director or an authorized inspection service as defined in this chapter.

Every milk producer, milk distributor, milk hauler, and operator of a milk plant shall secure a permit to

conduct such operation as defined in this chapter. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations.

Such a permit may be temporarily suspended by the director or health officer of a milk inspection unit upon violation by the holder of any of the terms of this chapter, or for interference with the director or health officer of a milk inspection unit in the performance of his duties, or revoked after an opportunity for a hearing by the director upon serious or repeated violations. [1961 c 11 § 15.36.080. Prior: 1955 c 238 § 8; 1949 c 168 § 3; Rem. Supp. 1949 § 6266-32.]

**15.36.090 Labeling.** All bottles, cans, packages, and other containers, enclosing milk or any milk product defined in this chapter shall be plainly labeled or marked with (1) the name of the contents as given in the definitions of this chapter; (2) the grade of the contents; (3) the word "pasteurized" only if the contents have been pasteurized; (4) the word "raw" only if the contents are raw; (5) the name of the producer if the contents are raw, and the identity of the plant at which the contents were pasteurized if the contents are pasteurized; (6) the phrase "for pasteurization" if the contents are to be pasteurized; (7) in the case of vitamin D milk the designation "vitamin D milk," the source of the vitamin D and the number of units per quart; (8) the word "reconstituted" or "recombined" if included in the name of the product as defined in this chapter; (9) in the case of concentrated milk or milk products the volume or proportion of water to be added for recombining; (10) the words "skim milk solids added," and the percentage added if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk or milk products: *Provided*, That only the identity of the producer shall be required on cans delivered to a milk plant which receives only raw milk for pasteurization and which immediately dumps, washes, and returns the cans to the producer.

The label or mark shall be in letters of a size, kind, and color approved by the director and shall contain no marks or words which are misleading. [1961 c 11 § 15.36.090. Prior: 1955 c 238 § 9; 1949 c 168 § 4; Rem. Supp. 1949 § 6266-33.]

**15.36.100 Inspection of dairy farms and milk plants.** Prior to the issuance of a permit and at least once every six months the director shall inspect all dairy farms and all milk plants: *Provided*, That the director may accept the results of periodic industry inspections of producer dairies if such inspections have been officially checked periodically and found satisfactory. In case the director discovers the violation of any item of sanitation, he shall make a second inspection after a lapse of such time as he deems necessary for the defect to be remedied, but not before the lapse of three days, and the second inspection shall be used in determining compliance with the grade requirements of this chapter. Any violation of the same requirement of this chapter on

such reinspection shall call for immediate degrading or suspension of permit.

One copy of the inspection report shall be posted by the director in a conspicuous place upon an inside wall of one of the dairy farm or milk plant buildings, and said inspection report shall not be defaced or removed by any person except the director. Another copy of the inspection report shall be filed with the records of the director.

Every milk producer and distributor shall upon the request of the director permit him access to all parts of the establishment, and every distributor shall furnish the director, upon his request, for official use only, samples of any milk product for laboratory analysis, a true statement of the actual quantities of milk and milk products of each grade purchased and sold, together with a list of all sources, records of inspections and tests, and recording thermometer charts. [1961 c 11 § 15.36.100. Prior: 1949 c 168 § 5; Rem. Supp. 1949 § 6266-34.]

#### **15.36.110 Examination of milk and milk products.**

During each six months period at least four samples of milk and cream from each dairy farm and each milk plant shall be taken on separate days and examined by the director: *Provided*, That in the case of raw milk for pasteurization the director may accept the results of nonofficial laboratories which have been officially checked periodically and found satisfactory. Samples of other milk products may be taken and examined by the director as often as he deems necessary. Samples of milk and milk products from stores, cafes, soda fountains, restaurants, and other places where milk or milk products are sold shall be examined as often as the director may require. Bacterial plate counts, direct microscopic counts, reduction tests, coliform determinations, phosphatase tests and other laboratory tests shall conform to the procedures in the current edition of "Standard Methods For The Examination Of Dairy Products," recommended by the American public health association. Examinations may include such other chemical and physical determinations as the director may deem necessary for the detection of adulteration. Samples may be taken by the director at any time prior to the final delivery of the milk or milk products. All proprietors of cafes, stores, restaurants, soda fountains, and other similar places shall furnish the director, upon his request, with the name of all distributors from whom their milk and milk products are obtained. Bioassays of the vitamin D content of vitamin D milk shall be made when required by the director in a laboratory approved by him for such examinations.

Whenever the average bacterial count, the average reduction time, or the average cooling temperature, falls beyond the limit for the grade then held, the director shall send written notice thereof to the person concerned and shall take an additional sample, but not before the lapse of three days, for determining a new average in accordance with RCW 15.36.050: *Provided*, That the three-out-of-four method, as specified in the following paragraph, may be used in lieu of the averaging method provided in RCW 15.36.050 for determining

compliance of bacterial plate counts, direct microscopic counts, or cooling temperatures. Violation of the grade requirement by the new average or the three-out-of-four method shall call for immediate degrading or suspension of the permit, unless the last individual result is within the grade limit.

Whenever more than one of the last four consecutive coliform tests made to determine bacterial count of samples taken on separate days falls beyond the limit for the grade then held, the director shall send written notice thereof to the person concerned and shall take an additional sample but not before the lapse of three days. Immediate degrading or suspension of permit shall be called for if the grade requirements are violated by such additional sample, unless the last individual result is within the grade limit.

In case of violation of the phosphatase test requirements, the cause of underpasteurization shall be determined and removed before milk or milk products from this plant can again be sold as pasteurized milk or milk products. [1961 c 11 § 15.36.110. Prior: 1955 c 238 § 10; 1949 c 168 § 6; Rem. Supp. 1949 § 6266-35.]

**15.36.120 Grading of milk and milk products—In general.** Grade of milk and milk products as defined in this chapter shall be based on the respectively applicable standards contained in RCW 15.36.120 to 15.36.460, inclusive, the grading of milk products being identical with the grading of milk, except that the bacterial standards shall be doubled in the case of cream and omitted in the case of sour cream and buttermilk. Vitamin D milk shall be only of grade A, certified pasteurized, or certified raw quality. The grade of a milk product shall be that of the lowest grade milk or milk product used in its preparation. [1961 c 11 § 15.36.120. Prior: 1955 c 238 § 12; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.130 Certified milk—raw—Standards.** Certified milk—raw is raw milk which conforms with requirements of the American association of medical milk commissions in force at the time of production and is produced under the supervision of a medical milk commission reporting monthly to the director and the state department of health. [1961 c 11 § 15.36.130. Prior: 1955 c 238 § 13; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

*Department of health abolished, powers and duties transferred to department of social and health services: RCW 43.20A.500 and 43.20A.030.*

**15.36.140 Grade A raw milk—Standards in general.** Grade A raw milk is raw milk produced upon dairy farms conforming with all of the items of sanitation contained in RCW 15.36.150 to 15.36.280, inclusive, and the bacterial plate count or the direct microscopic clump count of which does not exceed twenty thousand per milliliter, or the methylene blue reduction time of which is not less than seven hours, as determined in accordance with RCW 15.36.110.

Grade A raw milk for pasteurization is raw milk produced upon dairy farms conforming with all of said



items of sanitation except RCW 15.36.265 (bottling and capping), 15.36.270 (personnel health), and such portions of other items as are indicated therein, and the bacterial plate count or the direct microscopic clump count of which, as delivered from the farm, does not exceed one hundred thousand per milliliter, or the resazurin reduction time of which to P seven-fourth is not less than three hours, as determined in accordance with RCW 15.36.110. [1961 c 11 § 15.36.140. Prior: 1955 c 238 § 14; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.150 Cows—Tuberculosis, brucellosis, other diseases.** Except as provided hereinafter, tuberculin test of all herds and additions thereto shall be made before any milk therefrom is sold, and at least once every twelve months thereafter, by an accredited and licensed veterinarian approved by the state department of agriculture or veterinarian employed by the bureau of animal industry, United States department of agriculture. Said tests shall be made and the reactors disposed of in accordance with the requirements approved by the director for accredited herds. A certificate signed by the veterinarian or attested to by the director and filed with the director shall be evidence of the above test: *Provided*, That in modified accredited counties in which the modified accredited area plan is applied to the dairy herds, the modified accredited area system approved by the director shall be accepted in lieu of annual testing.

No fluid milk or cream designated or represented to be "grade A" fluid milk or cream shall be sold, offered or exposed for sale which has been produced from a herd of cows, one or more of which are infected with brucellosis at the time such milk is produced, or from animals in such herd which have not been blood tested for brucellosis at least once during the preceding calendar year, or milk ring tested for brucellosis at least semiannually during the preceding year. The results of a test for brucellosis by the state or federal laboratory of a blood sample drawn by an official veterinarian, shall be prima facie evidence of the infection or noninfection of the animal or herds: *Provided*, That in lieu thereof, two official negative milk ring tests for brucellosis not less than six months apart may be accepted as such evidence. All herds of cows, the fluid milk or cream from which is designated or represented to be "grade A" fluid milk or cream shall be blood tested for brucellosis annually or milk ring tested for brucellosis semiannually. Such herds showing any reaction to the milk ring test shall be blood tested and all reactors to the blood test removed from the herd and disposed of within fifteen days from the date they are tagged and branded. The remaining animals in the infected herd shall be retested at not less than thirty-day nor more than sixty-day intervals from the date of the first test. A series of retests, with removal and disposition of reacting animals, shall be continued until the herd shall have passed two successive tests in which no reactors are found. If upon a final test, not less than six months nor more than seven months from the date of the last negative test, no reactors are found in the herd, it shall be deemed a disease free herd. Results of official blood or

milk ring tests shall be conspicuously displayed in the milk house.

All milk and milk products consumed raw shall be from herds or additions thereto which have been found free from brucellosis, as shown by blood serum tests or other approved tests for agglutinins against brucella organisms made in a laboratory approved by the director. All such herds shall be retested at least every twelve months and all reactors removed from the herd. If a herd is found to have one or more animals positive to the brucellosis test, all milk from that herd is to be pasteurized until the three consecutive brucellosis tests obtained at thirty-day intervals between each test are found to be negative. A certificate identifying each animal by number and signed by the laboratory making the test shall be evidence of the above test.

Cows which show an extensive or entire induration of one or more quarters of the udder upon physical examination, whether secreting abnormal milk or not, shall be permanently excluded from the milking herd. Cows giving bloody, or stringy, or otherwise abnormal milk, but with only slight induration of the udder shall be excluded from the herd until reexamination shows that the milk has become normal.

For other diseases such tests and examinations as the director may require after consultation with state livestock sanitary officials shall be made at intervals and by methods prescribed by him. [1961 c 11 § 15.36.150. Prior: 1955 c 238 § 15; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.155 Grade A raw milk—Dairy barn, lighting.** A milking barn or stable shall be provided. It shall be provided with adequate light, properly distributed, for day or night milking. [1961 c 11 § 15.36.155. Prior: 1955 c 238 § 16; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.160 Grade A raw milk—Dairy barn, air space, ventilation.** Such sections of all dairy barns where cows are kept or milked shall be well ventilated and shall be so arranged as to avoid overcrowding. [1961 c 11 § 15.36.160. Prior: 1955 c 238 § 17; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.165 Grade A raw milk—Milking stable, floors, animals.** The floors and gutters of that portion of the barn or stable in which cows are milked shall be constructed of concrete or other approved impervious and easily cleaned material: *Provided*, That if the milk is to be pasteurized, tight, two-inch tongue and roove wood, impregnated with waterproofing material and laid with a mastic joint at the gutter may be used under the cows. Floors and gutters shall be graded to drain properly and shall be kept clean and in good repair. No horses, swine, or fowl shall be permitted in the milking stable. If dry cows, calves, or bulls are stabled therein, they shall be confined in stalls, stanchions or pens. [1961 c 11 § 15.36.165. Prior: 1955 c 238 § 18; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]



**15.36.170 Grade A raw milk—Milking stable, walls and ceiling.** The interior walls and the ceilings of the milking barn or stable shall be smooth, shall be white-washed or painted as often as may be necessary, or finished in an approved manner, and shall be kept clean and in good repair. In case there is a second story above the milking barn or stable the ceiling shall be tight. If hay, grain or other feed is stored in a feed room or feed storage space adjoining the milking space, it shall be separated therefrom by a dust tight partition and door. No feed shall be stored in the milking portion of the barn unless stored in dust tight containers. [1961 c 11 § 15.36.170. Prior: 1955 c 238 § 19; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.175 Grade A raw milk—Cow yard.** The cow yard shall be graded and drained as well as practicable and so kept that there are no standing pools of water nor accumulation of organic wastes. Swine shall be kept out. [1961 c 11 § 15.36.175. Prior: 1955 c 238 § 20; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.180 Grade A raw milk—Manure disposal.** All manure shall be removed and stored at least fifty feet from the milking barn or disposed of in such manner as best to prevent the breeding of flies therein and the access of cows to piles thereof: *Provided*, That in loafing or pen type stables manure droppings shall be removed or clean bedding added at sufficiently frequent intervals to prevent the accumulation of manure on cows' udders and flanks and the breeding of flies. [1961 c 11 § 15.36.180. Prior: 1955 c 238 § 21; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.185 Grade A raw milk—Milk house or room, construction.** There shall be provided a milk house or milk room in which the cooling, handling, and storing of milk and milk products and the washing, bactericidal treatment, and storing of milk containers and utensils shall be done. (1) The milk house or room shall be provided with a tight floor constructed of concrete or other impervious material, in good repair, and graded to provide proper drainage. (2) It shall have walls and ceilings of such construction as to permit easy cleaning, and shall be well painted or finished in an approved manner. (3) It shall be well lighted and ventilated. (4) It shall have all openings effectively screened, including outward-opening, self-closing doors, unless other effective means are provided to prevent the entrance of flies. (5) It shall be used for no other purposes than those specified above, except as may be approved by the director. (6) It shall not open directly into a stable or into any room for domestic purposes. (7) It shall have water piped into it. (8) It shall be provided with adequate facilities for the heating of water for the cleaning of utensils. (9) It shall be equipped with two-compartment stationary wash and rinse vats, except that in the case of retail raw milk, if chemicals are employed as the principal bactericidal treatment, the three-compartment type must be used; (10) and shall, unless the milk is to be pasteurized, be partitioned to separate the handling

of milk and the storage of cleaned utensils from the cleaning and other operations, which shall be so located and conducted as to prevent any contamination of the milk or of cleaned equipment. [1961 c 11 § 15.36.185. Prior: 1955 c 238 § 22; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.190 Grade A raw milk—Milk house or room, cleanliness, flies.** The floors, walls, ceilings, and equipment of the milk house or room shall be kept clean at all times. All means necessary for the elimination of flies shall be used. [1961 c 11 § 15.36.190. Prior: 1955 c 238 § 23; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.195 Grade A raw milk—Toilet.** Every dairy farm shall be provided with one or more sanitary toilets conveniently located and properly constructed, operated and maintained so that the waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply. [1961 c 11 § 15.36.195. Prior: 1955 c 238 § 24; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.200 Grade A raw milk—Water supply.** The water supply for the milk room and dairy barn shall be properly located, constructed, and operated, and shall be easily accessible, adequate, and of a safe sanitary quality according to standards approved by the state board of health. [1961 c 11 § 15.36.200. Prior: 1955 c 238 § 25; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.205 Grade A raw milk—Utensils, holding tanks, construction.** All multi-use containers, equipment, or other utensils used in the handling, storage, or transportation of milk or milk products shall be made of smooth nonabsorbent material and of such construction as to be easily cleaned and shall be in good repair. Joints and seams shall be welded or soldered flush. Woven wire cloth or multi-use cloth shall not be used for straining milk. If milk is strained, filter pads shall be used and not reused. All milk pails shall be of the seamless hooded type. All single-service containers, closures, and filter pads used shall have been manufactured, packaged, transported, and handled in a sanitary manner.

The design, construction, material and operation of all farm holding tanks shall be such as approved by the director. [1961 c 11 § 15.36.205. Prior: 1955 c 238 § 26; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.210 Grade A raw milk—Utensils, cleaning.** All multi-use containers, equipment, and other utensils used in the handling, storage, or transportation of milk or milk products must be thoroughly cleaned after each usage. [1961 c 11 § 15.36.210. Prior: 1955 c 238 § 27; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.215 Grade A raw milk—Utensils, bactericidal treatment.** All multi-use containers, equipment, and other utensils used in the handling, storage, or transportation of milk or milk products shall, before each usage, be effectively subjected to an approved bactericidal process with steam, hot water, chemicals, or hot air. [1961 c 11 § 15.36.215. Prior: 1955 c 238 § 28; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.220 Grade A raw milk—Utensils, storage.** All containers and other utensils used in the handling, storage, or transportation of milk or milk products shall, unless stored in bactericidal solutions, be so stored as to drain and dry and so as not to become contaminated before being used. [1961 c 11 § 15.36.220. Prior: 1955 c 238 § 29; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.225 Grade A raw milk—Utensils, handling.** After bactericidal treatment containers and other milk and milk product utensils shall be handled in such a manner as to prevent contamination of any surface with which milk or milk products come in contact. [1961 c 11 § 15.36.225. Prior: 1955 c 238 § 30; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.230 Grade A raw milk—Milking, udders and teats, abnormal milk.** Milking shall be done in the milking barn or stable. The udders and teats of all milking cows shall be clean and wiped with an approved bactericidal solution immediately preceding the time of milking. Abnormal milk shall be kept out of the milk supply and shall be so handled and disposed of as to preclude the infection of the cows and the contamination of milk utensils. [1961 c 11 § 15.36.230. Prior: 1955 c 238 § 31; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.235 Grade A raw milk—Milking—Flanks, bellies, and tails.** The flanks, bellies, and tails of all milking cows shall be free from visible dirt at the time of milking. All brushing shall be completed before milking commences. [1961 c 11 § 15.36.235. Prior: 1955 c 238 § 32; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.240 Grade A raw milk—Milkers' hands.** Milkers' hands shall be clean, rinsed with bactericidal solution, and dried with a clean towel immediately before milking and following any interruption in the milking operation. Wet-hand milking is prohibited. Convenient facilities shall be provided for the washing of milkers' hands. [1961 c 11 § 15.36.240. Prior: 1955 c 238 § 33; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.245 Grade A raw milk—Clean clothing.** Milkers and milk handlers shall wear clean outer garments while milking or handling milk, milk products, containers, utensils, or equipment. [1961 c 11 § 15.36.245. Prior: 1955 c 238 § 34; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.250 Grade A raw milk—Milk stools.** Milk stools shall be kept clean. [1961 c 11 § 15.36.250. Prior: 1955 c 238 § 35; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.255 Grade A raw milk—Removal of milk.** Each pail or can of milk shall be removed immediately to the milk house or straining room. No milk shall be strained or poured in the barn unless it is protected from flies and other contamination. [1961 c 11 § 15.36.255. Prior: 1955 c 238 § 36; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.260 Grade A raw milk—Cooling.** Milk and milk products for consumption in the raw state shall be cooled within thirty minutes after completion of milking to fifty degrees Fahrenheit or less and maintained at that temperature until delivery, as determined in accordance with RCW 15.36.110. Milk delivered daily for pasteurization shall be cooled within thirty minutes after completion of milking to sixty degrees Fahrenheit or less and maintained at that temperature until delivered and dumped.

Milk delivered every other day for pasteurization shall be cooled to forty degrees Fahrenheit or lower at the place of production and shall not exceed forty-five degrees Fahrenheit at any time prior to pasteurization. [1961 c 11 § 15.36.260. Prior: 1955 c 238 § 37; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.265 Grade A raw milk—Bottling and capping.** Milk and milk products for consumption in the raw state shall be bottled on the farm where produced. Bottling and capping shall be done in a sanitary manner by means of approved equipment and these operations shall be integral in one machine. Caps or cap stock shall be purchased in sanitary containers and kept therein in a clean dry place until used. [1961 c 11 § 15.36.265. Prior: 1955 c 238 § 38; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.270 Grade A raw milk—Personnel, health.** The health officer or a physician authorized by him shall examine and take a careful morbidity history of every person connected with a producer-distributor dairy, or about to be employed, whose work brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggest that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the state health authorities for such examinations, and if the results justify such person shall be barred from such employment. [1961 c 11 § 15.36.270. Prior: 1955 c 238 § 39; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.280 Grade A raw milk—Vehicles—Surroundings.** All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from the sun, from freezing, and from contamination. All vehicles used for the distribution of milk and milk products shall have the distributor's name prominently displayed. Deck boards must be used when more than one deck of cans are transported.

The immediate surroundings of the dairy shall be kept clean and free of health menaces. [1961 c 11 § 15.36.280. Prior: 1955 c 238 § 40; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.290 Grade B raw milk—Standards.** Grade B raw milk is raw milk which violates the bacterial standard requirement for grade A raw milk, but which conforms with all other requirements for grade A raw milk, and has an average bacterial plate count not exceeding one hundred thousand per milliliter, or an average direct microscopic count not exceeding one hundred thousand per cubic centimeter if clumps are counted or six hundred thousand per cubic centimeter if individual organisms are counted, or an average reduction time of not less than three and one-half hours, as determined under RCW 15.36.050 and 15.36.110. [1961 c 11 § 15.36.290. Prior: 1955 c 238 § 41; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.300 Grade C raw milk—Standards.** Grade C raw milk is raw milk of a producer–distributor which violates any of the requirements for grade B raw milk. [1961 c 11 § 15.36.300. Prior: 1955 c 238 § 42; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.310 Certified milk–pasteurized—Standards.** Certified milk–pasteurized is certified milk–raw which has been pasteurized, cooled and bottled in a milk plant conforming with the requirements for grade A pasteurized milk. [1961 c 11 § 15.36.310. Prior: 1955 c 238 § 43; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.320 Grade A pasteurized milk—Standards.** Grade A pasteurized milk is grade A raw milk for pasteurization which has been pasteurized, cooled and placed in the final container in a milk plant conforming with all of the items of sanitation contained in RCW 15.36.325 to 15.36.440, inclusive, which in all cases shows efficient pasteurization as evidenced by satisfactory phosphatase tests, and which at no time after pasteurization and until delivery has a bacterial plate count exceeding twenty thousand per milliliter or a positive coliform test in more than two out of four samples taken on separate days as determined in accordance with RCW 15.36.110: *Provided*, That the raw milk at no time between dumping and pasteurization, shall have a bacterial plate count or direct microscopic clump count exceeding two hundred thousand per milliliter.

The grading of a pasteurized–milk supply shall include the inspection of receiving and collection stations

with respect to compliance with RCW 15.36.325 to 15.36.395, inclusive, and RCW 15.36.405, 15.36.415, 15.36.430 and 15.36.440, except that the partitioning requirement of RCW 15.36.345 shall not apply. [1961 c 11 § 15.36.320. Prior: 1955 c 238 § 44; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.325 Grade A pasteurized milk—Floors.** The floors of all rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall be constructed of concrete or other equally impervious and easily cleaned material and shall be smooth, properly drained, provided with trapped drains, and kept clean and in good repair. [1961 c 11 § 15.36.325. Prior: 1955 c 238 § 45; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.330 Grade A pasteurized milk—Walls and ceiling.** Walls and ceilings of rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall have a smooth, washable, light colored surface, and shall be kept clean and in good repair. [1961 c 11 § 15.36.330. Prior: 1955 c 238 § 46; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.335 Grade A pasteurized milk—Doors and windows.** Unless other effective means are provided to prevent the access of flies, all openings to the outer air shall be effectively screened and all doors shall be self-closing. [1961 c 11 § 15.36.335. Prior: 1955 c 238 § 47; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.340 Grade A pasteurized milk—Lighting and ventilation.** All rooms shall be well lighted and ventilated. [1961 c 11 § 15.36.340. Prior: 1955 c 238 § 48; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

**15.36.345 Grade A pasteurized milk—Miscellaneous, protection from contamination.** The various milk–plant operations shall be so located and conducted as to prevent any contamination of the milk or of the cleaned equipment. All means necessary for the elimination of flies, other insects and rodents shall be used. There shall be separate rooms for (1) the pasteurization, processing, cooling, and bottling operations, and (2) the washing and bactericidal treatment of containers. Cans of raw milk shall not be unloaded directly into the pasteurizing room. Pasteurized milk or milk products shall not be permitted to come in contact with equipment with which unpasteurized milk or milk products have been in contact, unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment. Rooms in which milk, milk products, cleaned utensils, or containers are handled or stored shall not open directly into any stable or living quarters. The pasteurization plant shall be used for no other purposes than the processing of milk and milk products and the operations incident thereto, except as may be approved by the director. [1961 c 11 § 15.36.345. Prior: 1955 c 238 §

49; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.350 Grade A pasteurized milk—Toilet facilities.** Every milk plant shall be provided with toilet facilities approved by the director. Toilet rooms shall not open directly into any room in which milk, milk products, equipment, or containers are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well ventilated. A placard containing RCW 15.36-.520 and a sign directing employees to wash their hands before returning to work shall be posted in all toilet rooms used by employees. [1961 c 11 § 15.36.350. Prior: 1955 c 238 § 50; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.355 Grade A pasteurized milk—Water supply.** The water supply shall be easily accessible, adequate, and of a safe sanitary quality according to standards approved by the state board of health. [1961 c 11 § 15.36.355. Prior: 1955 c 238 § 51; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.360 Grade A pasteurized milk—Hand-washing facilities.** Convenient hand-washing facilities shall be provided, including hot and cold running water, soap, and approved sanitary towels. Hand-washing facilities shall be kept clean. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands. [1961 c 11 § 15.36.360. Prior: 1955 c 238 § 52; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.365 Grade A pasteurized milk—Sanitary piping.** All piping used to conduct milk or milk products shall be "sanitary milk piping" of a type which can be easily cleaned with a brush. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary milk piping. [1961 c 11 § 15.36.365. Prior: 1955 c 238 § 53; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.370 Grade A pasteurized milk—Construction and repair of containers and equipment.** All multi-use containers and equipment with which milk or milk products come in contact shall be so constructed and located as to be easily cleaned and shall be kept in good repair. All single-service containers, closures and gaskets used shall have been manufactured, packaged, transported and handled in a sanitary manner. [1961 c 11 § 15.36.370. Prior: 1955 c 238 § 54; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.375 Grade A pasteurized milk—Plumbing and disposal of wastes.** All wastes shall be properly disposed of. All plumbing and equipment shall be so designed and installed as to prevent contamination of the water supply and of milk equipment by backflow or siphonage. [1961 c 11 § 15.36.375. Prior: 1955 c 238 § 55; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.380 Grade A pasteurized milk—Cleaning and bactericidal treatment of containers and equipment.** All milk and milk products containers, including tank trucks and tank cars and all equipment, except single-service containers, shall be thoroughly cleaned after each usage. All such containers shall be effectively subjected to an approved bactericidal process after each cleaning and all equipment immediately before each usage. When empty and before being returned to a producer or distributor by a milk plant each container, including tank trucks and tank cars, shall be thoroughly cleaned and effectively subjected to an approved bactericidal process. [1961 c 11 § 15.36.380. Prior: 1955 c 238 § 56; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.385 Grade A pasteurized milk—Storage of containers and equipment.** After bactericidal treatment all bottles, cans, and other multi-use milk or milk products containers and equipment shall be stored in such manner as to be protected from contamination. [1961 c 11 § 15.36.385. Prior: 1955 c 238 § 57; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.390 Grade A pasteurized milk—Handling of containers and equipment.** Between bactericidal treatment and usage and during usage, containers and equipment shall be handled or operated in such manner as to prevent contamination of the milk. Pasteurized milk or milk products shall not be permitted to come in contact with equipment with which unpasteurized milk or milk products have been in contact, unless the equipment has first been thoroughly cleaned and effectively subjected to an approved bactericidal process. No milk or milk products shall be permitted to come in contact with equipment with which a lower grade of milk or milk products has been in contact, unless the equipment has first been thoroughly cleaned and effectively subjected to an approved bactericidal process. [1961 c 11 § 15.36.390. Prior: 1955 c 238 § 58; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.395 Grade A pasteurized milk—Storage of caps, parchment paper, and single service containers.** Milk bottle caps or cap stock, parchment paper for milk cans and single service containers and gaskets shall be purchased and stored only in sanitary tubes, wrappings, and cartons, and shall be kept therein in a clean, dry place, and shall be handled in a sanitary manner. [1961 c 11 § 15.36.395. Prior: 1955 c 238 § 59; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.400 Grade A pasteurized milk—Pasteurization.** Pasteurization shall be performed as described in RCW 15.36.020. [1961 c 11 § 15.36.400. Prior: 1955 c 238 § 60; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.405 Grade A pasteurized milk—Cooling.** All milk and milk products received for pasteurization shall immediately be cooled in approved equipment to fifty

degrees Fahrenheit or less and maintained at that temperature until pasteurized, unless they are to be pasteurized within two hours after receipt; and all pasteurized milk and milk products except those to be cultured shall be immediately cooled in approved equipment to a temperature of fifty degrees Fahrenheit or less and maintained thereat until delivery, as determined in accordance with RCW 15.36.110. [1961 c 11 § 15.36.405. Prior: 1955 c 238 § 61; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.410 Grade A pasteurized milk—Bottling.** Bottling of milk or milk products shall be done at the place of pasteurization in approved mechanical equipment. [1961 c 11 § 15.36.410. Prior: 1955 c 238 § 62; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.415 Grade A milk—Overflow milk—Come-back milk.** Overflow milk or milk products shall not be sold for human consumption. Come-back milk shall not be sold or used for fluid milk or fluid cream. [1961 c 11 § 15.36.415. Prior: 1955 c 238 § 63; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.420 Grade A pasteurized milk—Capping.** Capping of milk or milk products shall be done by approved mechanical equipment. Hand capping is prohibited. The cap or cover shall cover the pouring lip to at least its largest diameter. [1961 c 11 § 15.36.420. Prior: 1955 c 238 § 64; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.425 Grade A pasteurized milk—Personnel, health.** The health officer or a physician authorized by him shall examine and take careful morbidity history of every person connected with a pasteurization plant, or about to be employed, whose work brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggests that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the state department of health for such examinations, and if the results justify such persons shall be barred from such employment.

Such persons shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the health officer may require for the purpose of determining freedom from infection. [1961 c 11 § 15.36.425. Prior: 1955 c 238 § 65; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

*Department of health abolished, powers and duties transferred to department of social and health services: RCW 43.20A.500 and 43.20A.030.*

**15.36.430 Grade A pasteurized milk—Personnel, cleanliness.** All persons coming in contact with milk, milk products, containers or equipment shall wear

clean, washable, light colored outer garments and shall keep their hands clean at all times while thus engaged. [1961 c 11 § 15.36.430. Prior: 1955 c 238 § 66; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.440 Grade A pasteurized milk—Vehicles.** All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from the sun, from freezing, and from contamination. All vehicles used for distribution of milk or milk products shall have the name of the distributor prominently displayed.

Milk tank cars and tank trucks shall comply with construction, cleaning, bactericidal treatment, storage, and handling requirements of RCW 15.36.365, 15.36.370, 15.36.380, 15.36.385 and 15.36.390. While containing milk or cream they shall be sealed and labeled in an approved manner. [1961 c 11 § 15.36.440. Prior: 1955 c 238 § 67; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.450 Grade B pasteurized milk—Standards.** Grade B pasteurized milk is pasteurized milk which violates the bacterial standard for grade A pasteurized milk and/or the provisions of lipcover caps of RCW 15.36.420 and/or the requirement that grade A raw milk for pasteurization be used, but which conforms with all other requirements for grade A pasteurized milk, has been made from raw milk for pasteurization of not less than grade B quality, and has a bacterial plate count after pasteurization and before delivery not exceeding forty thousand per milliliter as determined in accordance with RCW 15.36.110. [1961 c 11 § 15.36.450. Prior: 1955 c 238 § 68; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.460 Grade C pasteurized milk—Standards.** Grade C pasteurized milk is pasteurized milk which violates any of the requirements for grade B pasteurized milk. [1961 c 11 § 15.36.460. Prior: 1955 c 238 § 69; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

**15.36.470 Grades of milk and milk products which may be sold.** No milk or milk products shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments except certified milk pasteurized, certified raw-milk, grade A milk pasteurized, or grade A milk-raw, and the director may revoke the permit of any milk distributor failing to qualify for one of the above grades, or in lieu thereof may degrade his product and permit its sale during a period not exceeding thirty days or in emergencies during such longer period as he may deem necessary. [1961 c 11 § 15.36.470. Prior: 1949 c 168 § 8; Rem. Supp. 1949 § 6266-37.]

**15.36.480 Reinstatement of permit—Supplementary regrading.** If at any time between the regular announcements of the grades of milk or milk products, a lower grade shall become justified, in accordance with RCW 15.36.100, 15.36.110, and 15.36.120 to 15.36.460,

inclusive, the director shall immediately lower the grade of such milk or milk products, and shall enforce proper labeling thereof.

Any producer or distributor of milk or milk products the grade of which has been lowered by the director, and who is properly labeling his milk and milk products, or whose permit has been suspended may at any time make application for the regrading of his products or the reinstatement of his permit.

Upon receipt of a satisfactory application, in case the lowered grade or the permit suspension was the result of violation of the bacteriological or cooling temperature standards, the director shall take further samples of the applicant's output, at a rate of not more than two samples per week. The director shall regrade the milk or milk products upward or reinstate the permit on compliance with grade requirements as determined in accordance with the provisions of RCW 15.36.110.

In case the lowered grade of the applicant's product or the permit suspension was due to a violation of an item other than bacteriological standard or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violated item of the specifications had been conformed with. Within one week of the receipt of such an application and statement the director shall make a reinspection of the applicant's establishment and thereafter as many additional reinspections as he may deem necessary to assure himself that the applicant is again complying with the higher grade requirements, and in case the findings justify, shall regrade the milk or milk products upward or reinstate the permit. [1961 c 11 § 15.36.480. Prior: 1949 c 168 § 9; Rem. Supp. 1949 § 6266-37a.]

**15.36.490 Transferring, mixing, or dipping milk or cream—Delivery containers—Cooling—Quarantined residences.** Except as permitted in this section, no milk producer or distributor shall transfer milk or milk products from one container to another on the street, or in any vehicle, or store, or in any place except a bottling or milk room especially used for that purpose.

Milk and milk products sold in the distributor's containers in quantities less than one gallon shall be delivered in standard milk bottles or in single-service containers. It shall be unlawful for hotels, soda fountains, restaurants, groceries, hospitals, and similar establishments to sell or serve any milk or milk products except in the individual original container in which it was received from the distributor or from a bulk container equipped with an approved dispensing device: *Provided*, That this requirement shall not apply to cream consumed on the premises, which may be served from the original bottle or from a dispenser approved for such service.

It shall be unlawful for any hotel, soda fountain, restaurant, grocery, hospital, or similar establishment to sell or serve any milk or milk product which has not been maintained, while in its possession, at a temperature of fifty degrees Fahrenheit or less. If milk or milk products are stored in water for cooling, the pouring lip of the container shall not be submerged.

It shall be the duty of all persons to whom milk or milk products are delivered to clean thoroughly the containers in which such milk or milk products are delivered before returning such containers. Apparatus, containers, equipment, and utensils used in the handling, storage, processing, or transporting of milk or milk products shall not be used for any other purpose without the permission of the director.

The delivery of milk or milk products to and the collection of milk or milk products containers from residences in which cases of communicable disease transmissible through milk supplies exists shall be subject to the special requirements of the health officer.

Homogenized milk or homogenized cream shall not be mixed with milk or cream which has not been homogenized if sold or offered for sale as fluid milk or cream. [1961 c 11 § 15.36.490. Prior: 1949 c 168 § 10; Rem. Supp. 1949 § 6266-38.]

**15.36.500 Sale of out-of-state milk and milk products.** Milk and milk products from outside the state may not be sold in the state of Washington unless produced and/or pasteurized under provisions equivalent to the requirements of this chapter: *Provided*, That the director shall satisfy himself that the authority having jurisdiction over the production and processing is properly enforcing such provisions. [1961 c 11 § 15.36.500. Prior: 1949 c 168 § 11; Rem. Supp. 1949 § 6266-39.]

**15.36.510 Dairies and milk plants constructed or altered after June 8, 1949.** All dairies and milk plants from which milk or milk products are supplied which are constructed, reconstructed, or extensively altered after June 8, 1949, shall conform in their construction to the grade A requirements of this chapter. Properly prepared plans for all dairies and milk plants which are thereafter constructed, reconstructed or extensively altered shall be submitted to the director for approval before work is begun. In the case of milk plants signed approval shall be obtained from the director. [1961 c 11 § 15.36.510. Prior: 1949 c 168 § 12; Rem. Supp. 1949 § 6266-40.]

**15.36.520 Personnel, health—Notification of disease.** No person who is affected with any disease in a communicable form or is a carrier of such disease shall work at any dairy farm or milk plant in any capacity which brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment; and no dairy farm or milk plant shall employ in any such capacity any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such disease. Any producer or distributor of milk or milk products upon whose dairy farm or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease shall notify the health officer immediately. [1961 c 11 § 15.36.520. Prior: 1949 c 168 § 13; Rem. Supp. 1949 § 6266-41.]



**15.36.530 Personnel, health—Procedure when infection suspected.** When suspicion arises as to the possibility of transmission of infection from any person concerned with the handling of milk or milk products, the health officer is authorized to require any or all of the following measures: (1) The immediate exclusion of the milk supply concerned from distribution and use, (2) the immediate exclusion of that person from milk handling, (3) adequate medical and bacteriological examination of the person, of his associates, and of his and their body discharges. [1961 c 11 § 15.36.530. Prior: 1949 c 168 § 14; Rem. Supp. 1949 § 6266-42.]

**15.36.540 Federal milk code interpretation to govern.** Save as in this chapter provided this law shall be enforced by the director in accordance with the interpretation contained in the 1965 edition of the United States public health service milk code: *Provided*, That the director may by rule adopt any subsequent amendments to such code as interpretations for the enforcement of this chapter whenever he determines that any such amendments are necessary to carry out the purposes of RCW 15.32.120, 15.36.011, 15.36.075, 15.36.540 and 15.36.600. [1969 ex.s. c 102 § 6; 1961 c 11 § 15.36.540. Prior: 1949 c 168 § 15; Rem. Supp. 1949 § 6266-44.]

**15.36.550 Rules and regulations—Standards.** The director shall have the power and duty (1) to adopt, issue and promulgate from time to time necessary rules, regulations and orders for the enforcement of this chapter; (2) with the approval of the state director of health to adopt standards of requirements necessary for approval of local milk inspection service units hereinafter provided for, the basic standards in this connection being a sufficient force of qualified personnel under the general direction of a health officer, and sufficient laboratory facilities to insure compliance with the provisions of this chapter and the rules and regulations promulgated thereunder; and (3) to cancel, and with the consent of the director of health, to approve the issuance of certificates of approval for such local milk inspection service units. [1961 c 11 § 15.36.550. Prior: 1949 c 168 § 16; Rem. Supp. 1949 § 6266-44.]

*Department of health abolished, powers and duties of director transferred to secretary of social and health services: RCW 43.20A.500 and 43.20A.120.*

**15.36.560 Local milk inspection service units.** Any city, township, or county desiring to maintain and operate a local milk inspection service unit shall make application in writing to the director for a certificate of approval. Upon receipt of such application the director shall investigate and determine whether the city, township, or county is entitled to approval in the maintenance and operation of a local milk inspection service unit, and if so the director, with the consent and approval of the director of health, shall issue the certificate applied for. The boundaries of jurisdiction of the local milk inspection service unit shall be defined by the director after investigation and consultation with the health officer of the local milk inspection service unit

taking into consideration among other things the geographical convenience of the area and the amount of fluid milk and fluid milk products sold or delivered within the area. Upon receipt of such certificate of approval the local milk inspection service unit shall have full authority through the health officer to perform all of the duties relative to the enforcement of the provisions of this chapter and to the issuing, suspension and revocation of permits within the defined jurisdiction of such local milk inspection service unit. Any certificate of approval may be canceled by the director after thirty days notice in writing to the holder of the certificate of approval should the local milk inspection service unit be found incompetent, inadequate, improper or remiss in any particular. [1961 c 11 § 15.36.560. Prior: 1949 c 168 § 17; Rem. Supp. 1949 § 6266-45.]

**15.36.570 Designation of additional inspection units.** Whenever a milk producer or milk distributor intends to deliver or sell fluid milk or fluid cream outside the jurisdiction of his own local milk inspection service unit, the director, on application and after investigation and consultation with the health officer of each local milk inspection service unit concerned, shall designate which local milk inspection service unit shall conduct the inspections. The director, in making such designations, shall in addition to other matters considered by him, take into consideration the geographical convenience of each local milk inspection service unit and the percentage of fluid milk or fluid cream sold and/or delivered within the jurisdiction of such local milk inspection service units. All fluid milk and fluid milk products so inspected may be sold and delivered within the jurisdiction of any local milk inspection service unit: *Provided*, That applicable ordinances of political subdivisions of government in said jurisdiction more stringent than, and not inconsistent with, the provisions of this chapter are not thereby violated. The local milk inspection service unit designated by the director to render such inspection service shall issue permits in accordance with applicable provisions of all local ordinances of each city, township, or county into which fluid milk or fluid milk products are sold or delivered. [1961 c 11 § 15.36.570. Prior: 1949 c 168 § 18, part; Rem. Supp. 1949 § 6266-46, part.]

**15.36.580 Hearing of protests—Findings and order—Appeal.** In case of a written protest from any fluid milk producer, fluid milk distributor or health officer, concerning the enforcement of any provisions of this chapter or of any rules and regulations thereunder, the director, or his duly authorized assistant, within ten days after receipt of such protest and after five days written notice thereof to the party against whom the protest is made, shall hold a summary hearing in the county where either the party protesting or protested against resides, upon the completion of which the director or his duly authorized assistant shall make such written findings of fact and order as the circumstances may warrant: *Provided*, That if the protest originates with a producer, the hearings shall be held in the county where the protesting producer resides. Such findings



and order shall be final and conclusive upon all parties from and after their effective date, which date shall be five days after being signed and deposited postage prepaid in the United States mails addressed to the last known address of all said parties. An appeal from such findings or order may be taken within ten days of their effective date to the superior court of the county in which the hearing is held upon such notice and in such manner as appeals are taken from judgments rendered in justice court. [1961 c 11 § 15.36.580. Prior: 1949 c 168 § 18, part; Rem. Supp. 1949 § 6266-46, part.]

**15.36.590 Penalty.** Any person who shall violate or fail to comply with the provisions of this chapter or the rules, regulations or orders, issued under the authority of this chapter shall be guilty of a misdemeanor. [1961 c 11 § 15.36.590. Prior: 1949 c 168 § 19; Rem. Supp. 1949 § 6266-48.]

**15.36.600 Violations may be enjoined.** The director may bring an action to enjoin the violation of any provision of chapters 15.36 and 15.38 RCW or any rule adopted thereunder in the superior court of the county in which the defendant resides or maintains his principal place of business, notwithstanding any other remedy at law. [1969 ex.s. c 102 § 4.]

**15.36.900 Chapter to be construed as cumulative.** Except as expressly provided, nothing in this chapter shall be construed as effecting or being intended to effect a repeal of chapter 15.32 RCW, or of any part or provision of such chapter 15.32 RCW, and if any section or part of a section in this chapter shall be found to contain, cover or effect any matter, topic, or thing which is also contained in, covered in or effected by chapter 15.32 RCW, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers, and duties herein prescribed shall be construed to be additional to those prescribed in chapter 15.32 RCW and not substitutions therefor. [1961 c 11 § 15.36.900. Prior: 1949 c 168 § 23; Rem. Supp. 1949 § 6266-49. Formerly RCW 15.36.600.]

### Chapter 15.37 MILK AND MILK PRODUCTS FOR ANIMAL FOOD

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15.37.900 Severability—1961 c 285.

**15.37.010 Definitions.** For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be. [1961 c 285 § 1.]

**15.37.020 Enforcement of chapter—Rules, subject to administrative procedure act.** The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.04 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 285 § 2.]

**15.37.030 Minimum conditions for sale, etc.—When license required—Expiration date of license.** It shall be unlawful for any person to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk, for animal food consumption, which does not meet, or has not been produced and handled under conditions prescribed for grade A milk as provided in chapter 15.36 RCW as enacted or hereafter amended, without first obtaining an annual license from the director which shall expire on June 30th following the date of issuance unless revoked prior thereto by the director for cause. [1961 c 285 § 3.]

**15.37.040 Application, issuance of license.** Application for a license shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is a receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notice of all kinds.

(5) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required fee. [1961 c 285 § 4.]

**15.37.050 License fee on application.** The application for an annual license to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk for animal food consumption shall be accompanied by a license fee of twenty-five dollars. [1961 c 285 § 5.]

**15.37.060 Penalty for delinquency on renewal of license.** If an application for renewal of a license provided for in RCW 15.37.030 is not filed prior to July 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not sold, offered for sale, held for sale, or advertised for sale, milk, cream, or skim milk for animal food consumption subsequent to the expiration of his prior license. [1961 c 285 § 6.]

**15.37.070 Denial, suspension, revocation of license.** The director is authorized to deny, suspend, or revoke the license provided for in RCW 15.37.030 subsequent to a hearing in any case in which he finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [1961 c 285 § 7.]

**15.37.080 Denial, suspension, revocation of license—Hearings subject to administrative procedure act.** All hearings for a denial, suspension, or revocation of a license provided for in RCW 15.37.030 shall be subject to the provisions of chapter 34.04 RCW, concerning contested cases, as enacted or hereafter amended. [1961 c 285 § 8.]

**15.37.090 Subpoenas—Witness fees.** The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records in the county in which the person licensed under this chapter resides in any hearing affecting the authority or privileges granted by a license issued under the provisions of this chapter. Witnesses, except complaining witnesses, shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1961 c 285 § 9.]

**15.37.100 Coloring of milk in containers, when required.** It shall be unlawful for any person to sell, offer for sale, hold for sale, advertise for sale, trade, barter, or to give as an inducement for the sale of another product, any milk, cream, or skim milk, for animal food consumption which does not meet, or has not been produced under conditions prescribed for grade A milk, as prescribed in chapter 15.36 RCW as enacted or hereafter amended and rules adopted thereunder, and the applicable provisions of chapter 69.04 RCW (the Food, Drug and Cosmetic Act) as enacted and hereafter amended and rules adopted thereunder, in containers provided either by the vendor or vendee and which are capable of holding less than twenty liquid

quarts, unless such milk, cream, or skim milk has been decharacterized with a color prescribed by the director which will not affect its nutritive value for animal food. [1961 c 285 § 10.]

**15.37.110 Labels on containers—Contents.** It shall be unlawful to sell, offer for sale, hold for sale, trade, barter, or to offer as an inducement for the sale of another product, milk, cream, or skim milk subject to the provisions of this chapter in containers which are not labeled in a conspicuous location readily visible to any person handling such containers with the following:

(1) The name and address of the producer or distributor in letters not less than one-fourth inch in size.

(2) The name of the contents in letters not less than one-fourth inch in size.

(3) The words "not for human consumption" in letters at least one-half inch in size.

(4) The words "decharacterized with harmless food coloring" in letters not less than one-fourth inch in size. [1961 c 285 § 11.]

**15.37.120 Entry on premises.** The director or his duly authorized representative may enter, during reasonable business hours, any premise where milk, cream, or skim milk subject to the provisions of this chapter is produced, handled, distributed, sold, offered for sale, held for sale, or used for the inducement of the sale of another product to determine if such milk, cream, or skim milk has been properly decharacterized as provided in RCW 15.37.100 or rules adopted hereunder. No person shall interfere with the director or his duly authorized representative when he is performing or carrying out the duties imposed on him by this chapter or rules adopted hereunder. [1961 c 285 § 12.]

**15.37.130 Injunctions authorized.** The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of Thurston county, notwithstanding the existence of any other remedy at law. [1961 c 285 § 13.]

**15.37.140 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1961 c 285 § 14.]

**15.37.150 Penalty.** Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor. [1961 c 285 § 15.]

**15.37.900 Severability—1961 c 285.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 285 § 16.]

## Chapter 15.38 FILLED DAIRY PRODUCTS

### Sections

15.38.001 Declaration of purpose.

- 15.38.010 Definitions and exclusions.
- 15.38.020 Filled dairy products prohibited.
- 15.38.030 Duties of director of agriculture.
- 15.38.040 Injunction—Seizure—Products deemed adulterated.
- 15.38.045 Violations may be enjoined.
- 15.38.050 Penalties.

Adoption of rules concerning: RCW 15.36.011.

**15.38.001 Declaration of purpose.** Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products creates a condition conducive to substitution, confusion, deception, and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this chapter to correct and eliminate the condition above referred to; to protect the public from confusion, fraud and deception; to prohibit practices inimical to the general welfare; and to promote the orderly and fair marketing of essential foods. [1961 c 11 § 15.38.001. Prior: 1951 c 20 § 1.]

**15.38.010 Definitions and exclusions.** Whenever used in this chapter:

(1) The term "person" includes individuals, firms, partnerships, associations, trusts, estates, corporations, and any and all other business units, devices or arrangements.

(2) The term "filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to, milk, cream, sour cream, skimmed milk, ice cream, whipped cream, flavored milk or skim-milk, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk: *Provided, however,* That this term shall not be construed to mean or include:

(a) Oleomargarine;

(b) Any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) Any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used; or

(d) Any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil

does not exceed one one-hundredths of one percent of the weight of the finished dairy product.

(3) The term "intrastate commerce" means any and all commerce within the state of Washington subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1961 c 11 § 15.38.010. Prior: 1951 c 20 § 2.]

**15.38.020 Filled dairy products prohibited.** (1) It shall be unlawful in intrastate commerce for any person to manufacture, sell, exchange, purvey, transport or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product;

(2) It shall be unlawful for any person owning or operating a bakery, confectionery shop, factory or other place where food products are prepared or manufactured for sale, exchange or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared;

(3) It shall be unlawful in intrastate commerce for any person knowingly to sell, exchange, purvey, transport or possess any food product in which any filled dairy product is an ingredient. [1961 c 11 § 15.38.020. Prior: 1951 c 20 § 3.]

**15.38.030 Duties of director of agriculture.** The director of agriculture is authorized and directed:

(1) To administer and supervise the enforcement of this chapter;

(2) To provide for such periodic inspections and investigations as he may deem necessary to disclose violations;

(3) To receive and provide for the investigation of complaints;

(4) To provide for the institution and prosecution of civil or criminal actions, or both. [1961 c 11 § 15.38.030. Prior: 1951 c 20 § 5.]

**15.38.040 Injunction—Seizure—Products deemed adulterated.** The provisions of this chapter may be enforced by injunction brought by any private person, firm, or corporation or by a municipal corporation or agent or subdivision thereof, in any court having jurisdiction to grant injunctive relief.

Filled dairy products illegally held or otherwise involved in a violation of this chapter shall be subject to seizure and disposition in accordance with an appropriate court order.

In addition, all filled dairy products as defined herein and all food products containing filled dairy products as an ingredient are hereby declared to be adulterated for all purposes of law including all the purposes of the Washington uniform food, drug and cosmetic act, RCW 69.04.001 to 69.04.870, inclusive. [1961 c 11 § 15.38.040. Prior: 1951 c 20 § 6.]

**15.38.045 Violations may be enjoined.** See RCW 15.36.600.

**15.38.050 Penalties.** Any person who shall violate any of the provisions of this chapter, and any officer, agent or employee thereof who directs or knowingly permits such violation or who aids or assists therein, shall, upon conviction thereof, be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars: *Provided*, That if such violation is committed after a previous conviction of such person hereunder has become final, such person shall be guilty of a gross misdemeanor and shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or to imprisonment for not more than ninety days, or both. Each separate violation shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey the provisions of this chapter, each day of continuance of such failure or neglect shall be deemed a separate offense. [1961 c 11 § 15.38.050. Prior: 1951 c 20 § 4.]

#### Chapter 15.40 OLEOMARGARINE—1949 ACT

|           |   |
|-----------|---|
| Sections  |   |
| 15.40.010 | Definitions.  |
| 15.40.030 | Advertising of oleomargarine—Dairy terms prohibited.      |
| 15.40.040 | Enforcement—Powers and duties of director of agriculture. |
| 15.40.050 | Penalty for violations.                                   |
| 15.40.900 | Preamble.   |

**15.40.010 Definitions.** The term "oleomargarine" as used in this chapter includes:

(1) All substances, mixtures and compounds known as oleomargarine, margarine, oleo or butterine;

(2) All substances, mixtures and compounds which have a consistency similar to that of butter and which contains any edible oils or fats other than milk fat, if (a) made in imitation or semblance of butter, or purporting to be butter or a butter substitute; or (b) commonly used, or intended for common use, in place of or as a substitute for butter; or (c) churned, emulsified or mixed in cream, milk, skim milk, buttermilk, water or other liquid and containing moisture in excess of one percent and commonly used, or suitable for common use, as a substitute for butter.

For the purposes of this chapter "yellow oleomargarine" is oleomargarine as defined in this section, having a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, measured in terms of the Lovibond tintometer scale or the equivalent of such measurement when the Lovibond tintometer is read under conditions similar to those established by the United States bureau of internal revenue. [1961 c 11 § 15.40.010. Prior: 1949 c 13 § 1; Rem. Supp. 1949 § 6248-1.]

**15.40.030 Advertising of oleomargarine—Dairy terms prohibited.** It shall be unlawful in connection with the labeling, selling, or advertising of oleomargarine to

use dairy terms, or words or designs commonly associated with dairying or dairy products, except to the extent that such words or terms are necessary to meet legal requirements for labeling. [1961 c 11 § 15.40.030. Prior: 1949 c 13 § 2(b); Rem. Supp. 1949 § 6248-2(b).]

**15.40.040 Enforcement—Powers and duties of director of agriculture.** The director is authorized and directed to administer and supervise the enforcement of this chapter; to prescribe rules and regulations to carry out its purposes; to provide for such periodic inspections and investigations as he may deem necessary to disclose violations; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions, or both. The provisions of this chapter and the rules and regulations issued in connection therewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and yellow oleomargarine illegally held or otherwise involved in a violation of this chapter or of said rules and regulations shall be subject to seizure and disposition in accordance with an order of court. [1961 c 11 § 15.40.040. Prior: 1949 c 13 § 3; Rem. Supp. 1949 § 6248-3.]

**15.40.050 Penalty for violations.** Any person, firm, or corporation that violates any of the provisions of this chapter, or of the rules and regulations issued in connection therewith, and any officer, agent, or employee thereof who directs or knowingly permits such violation, or who aids or assists therein, shall be guilty of a misdemeanor. [1961 c 11 § 15.40.050. Prior: 1949 c 13 § 4; Rem. Supp. 1949 § 6248-4.]

**15.40.900 Preamble.** Yellow oleomargarine resembles butter so closely that it lends itself readily to substitution for or confusion with butter and in many cases cannot be distinguished from butter by the ordinary consumer. The manufacture, sale or serving of yellow oleomargarine creates a condition conducive to substitution, confusion, deception and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state.

It is hereby declared to be the purpose of this chapter to correct and eliminate the condition above referred to, protect the public from confusion, fraud and deception, prohibit practices inimical to the general welfare, and promote the orderly and fair marketing of essential foods, without an additional tax burden. [1961 c 11 § 15.40.900. Prior: 1949 c 13 Preamble; no RRS.]

#### Chapter 15.41 OLEOMARGARINE—1953 ACT

|           |   |
|-----------|---|
| Sections  |   |
| 15.41.010 | Declaration of purpose.   |
| 15.41.020 | Repeal of prohibition against manufacture, transportation, sale, etc., of yellow oleomargarine. |

**15.41.010 Declaration of purpose.** The purpose of this chapter is to legalize the manufacture, transportation, handling, possession, sale, use or serving of yellow

oleomargarine. The term oleomargarine shall have the same meaning as given in RCW 15.40.010. [1961 c 11 § 15.41.010. Prior: 1953 c 1 § 1; Initiative Measure No. 180 § 1.]

**15.41.020 Repeal of prohibition against manufacture, transportation, sale, etc., of yellow oleomargarine.** Section 15.40.020, RCW, as derived from section 2(a), chapter 13, Laws of 1949 is hereby repealed. [1961 c 11 § 15.41.020. Prior: 1953 c 1 § 2, Initiative Measure No. 180.]

**Reviser's note:** The repealed section, RCW 15.40.020 read as follows: "The manufacture, transportation, handling, possession, sale, use or serving of yellow margarine is hereby prohibited: *Provided*, That nothing herein contained shall be construed to prohibit the use of yellow oleomargarine in private homes."

### Chapter 15.44

#### DAIRY PRODUCTS COMMISSION

##### Sections

|           |  |
|-----------|--|
| 15.44.010 | Definitions.   |
| 15.44.020 | Commission created—Composition—Election.                             |
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| 15.44.030 | Member qualifications.   |
| 15.44.032 | Terms—Vacancies.   |
| 15.44.033 | Nomination and election procedure.                                   |
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| 15.44.090 | Collection of assessments—Lien.                                      |
| 15.44.100 | Records of dealers, shippers—Preservation—Inspection.                |
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| 15.44.130 | Research, advertising, educational campaign—Decrease of assessments. |
| 15.44.135 | Promotional printing and literature—Contracts.                       |
| 15.44.140 | Authority to enter and inspect records.                              |
| 15.44.150 | Nonliability for commission acts.                                    |
| 15.44.160 | Enforcement of chapter.  |
| 15.44.170 | Penalty.   |
| 15.44.180 | Jurisdiction of courts.  |
| 15.44.900 | Purpose of chapter.  |
| 15.44.910 | Liberal construction.  |

**15.44.010 Definitions.** As used in this chapter:

"Commission" means the Washington state dairy products commission;

To "ship" means to deliver or consign milk or cream to a person dealing in, processing, distributing, or manufacturing dairy products for sale, for human consumption, industrial or medicinal uses;

"Handler" means one who purchases milk, cream, or skimmed milk for processing, manufacturing, sale, or distribution;

"Dealer" means one who handles, ships, buys, and sells dairy products, or who acts as sales or purchasing agent, broker, or factor of dairy products;

"Processor" means a person who uses milk or cream for canning, drying, manufacturing, preparing, or packaging or for use in producing or manufacturing any product therefrom;

"Producer" means a person who produces milk from cows or goats and sells it for human or animal food, or medicinal or industrial uses. [1961 c 11 § 15.44.010. Prior: 1939 c 219 § 2; RRS § 6266-2.]

**15.44.020 Commission created—Composition—Election.** There is hereby created a Washington state dairy products commission to be thus known and designated. The commission shall be composed of seven practical producers of dairy products to be elected by such producers and the director of agriculture who shall be an ex officio member without vote. [1965 ex.s. c 44 § 2; 1961 c 11 § 15.44.020. Prior: 1959 c 163 § 2; prior: (i) 1939 c 219 § 3, part; RRS § 6266-3, part. (ii) 1939 c 219 § 4, part; RRS § 6266-4, part.]

**15.44.025 Commission districts—Representation.** Each elected commission member shall represent one of the following districts:

(1) District I, which shall include the counties of Pend Oreille, Spokane and Stevens;

(2) District II, which shall include the counties of Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Lincoln, Okanogan, Whitman and Walla Walla;

(3) District III, which shall include the counties of Benton, Klickitat and Yakima;

(4) District IV, which shall include the counties of Clark, Cowlitz, Lewis, Pacific, Skamania and Wahkiakum;

(5) District V, which shall include the counties of King, Pierce, and Snohomish;

(6) District VI, which shall include the counties of Island, San Juan, Skagit and Whatcom; and

(7) District VII, which shall include the counties of Clallam, Grays Harbor, Jefferson, Kitsap, Mason and Thurston. [1965 ex.s. c 44 § 3; 1961 c 11 § 15.44.025. Prior: 1959 c 163 § 3.]

**15.44.030 Member qualifications.** Each of the seven producer members of the commission shall:

(1) Be a citizen and resident of this state and the district which he represents; and

(2) Be and for the five years last preceding his election have been actually engaged in producing dairy products within this state. These qualifications must continue during each member's term of office. [1965 ex.s. c 44 § 4; 1961 c 11 § 15.44.030. Prior: 1959 c 163 § 4; prior: 1939 c 219 § 3, part; RRS § 6266-3, part.]

**15.44.032 Terms—Vacancies.** The regular term of office of each producer member of the commission shall be three years. Commission members shall be first nominated and elected in 1966 in the manner set forth in RCW 15.44.033 and shall take office as soon as they are qualified. However, expiration of the term of the respective commission members first elected in 1966 shall be as follows:

- (1) District I and II on July 1, 1967;
- (2) District III and IV on July 1, 1968; and
- (3) District V, VI and VII on July 1, 1969.

The respective terms shall end on July 1st of each third year thereafter. Any vacancies that occur on the commission shall be filled by appointment by the other members of the commission, and such appointee shall hold office for the remainder of the term for which he is appointed to fill, so that commission memberships shall be on a uniform staggered basis. [1965 ex.s. c 44 § 5; 1961 c 11 § 15.44.032. Prior: 1959 c 163 § 5.]

**Duration of present terms:** "The term of the members of the commission appointed by the governor prior to the effective date of this 1965 amendatory act shall continue until their successors are elected and qualified as provided in this 1965 amendatory act." [1965 ex.s. c 44 § 9.]

**15.44.033 Nomination and election procedure.** Producer members of the commission shall be nominated and elected by producers within the district that such producer members represent in the year in which a commission member's term shall expire. Such producer members receiving the largest number of the votes cast in the respective districts which they represent shall be elected. The election shall be by secret mail ballot and under the supervision of the director.

Nomination for candidates to be elected to the commission shall be conducted by mail by the director. Such nomination forms shall be mailed by the director to each producer in a district where a vacancy is about to occur. Such mailing shall be made on or after April 1st, but not later than April 10th of the year the commission vacancy will occur. The nomination form shall provide for the name of the producer being nominated and the names of five producers nominating such nominee. The producers nominating such nominee shall affix their signatures to such form and shall further attest that the said nominee meets the qualifications for a producer member to serve on the commission and that he will be willing to serve on the commission if elected.

All nominations as provided for herein shall be returned to the director by April 30th, and the director shall not accept any nomination postmarked later than midnight April 30th, nor place the candidate thereon on the election ballot.

Ballots for electing members to the commission will be mailed by the director to all eligible producers no later than May 15th, in districts where elections are to be held and such ballots to be valid shall be returned postmarked no later than May 31st of the year mailed, to the director in Olympia.

Whenever producers fail to file any nominating petitions, the director shall nominate at least two, but not more than three, qualified producers and place their names on the secret mail election ballot as nominees: *Provided*, That any qualified producer may be elected by a write-in ballot, even though said producer's name was not placed in nomination for such election. [1967 c 240 § 30; 1965 ex.s. c 44 § 6.]

**Severability—1967 c 240:** See note following RCW 43.23.010.

**15.44.035 Producer lists.** The commission shall prior to each election, in sufficient time to satisfy the requirements of RCW 15.44.033, furnish the director with a list of all producers within the district for which the election is being held. The commission shall require each dealer and shipper in addition to the information required under RCW 15.44.110 to furnish the commission with a list of names of producers whose milk they handle. Any producer may on his own motion file his name with the commission for the purpose of receiving notice of election. [1965 ex.s. c 44 § 7.]

**15.44.037 Reimbursement of election costs.** The commission shall reimburse the director for the necessary costs of conducting elections under the provisions of this chapter. [1965 ex.s. c 44 § 8.]

**15.44.038 Quorum—Compensation—Expenses.** A majority of the commission members shall constitute a quorum for the transaction of all business and the performance of all duties of the commission. No member of the commission shall receive any salary or other compensation. Each member shall receive a sum not to exceed twenty dollars a day for each day spent in actual attendance at or traveling to and from meetings of the commission or when conducting business of the commission as authorized by the commission, together with traveling expenses at the rate allowed by RCW 43.03-.050 as now or hereafter amended. [1961 c 11 § 15.44-.038. Prior: 1959 c 163 § 8.]

**15.44.040 Copies of records as evidence.** Copies of the proceedings, records and acts of the commission, when certified by the secretary, shall be admissible in any court and be prima facie evidence of the truth of the statements therein contained. [1961 c 11 § 15.44.040. Prior: 1959 c 163 § 9; prior: 1939 c 219 § 4, part; RRS § 6266-4, part.]

**15.44.050 Manager—Secretary—treasurer—Treasurer's bond.** The commission shall elect a manager, who is not a member, and fix his compensation; and shall appoint a secretary—treasurer, who shall sign all vouchers and receipts for all moneys received by the commission. The treasurer shall file with the commission a fidelity bond in the sum of twenty thousand dollars, executed by a surety company authorized to do business in the state, in favor of the state and the commission, conditioned for the faithful performance of his duties and strict accounting of all funds to the commission. [1961 c 11 § 15.44.050. Prior: (i) 1939 c 219 § 5; RRS § 6266-5. (ii) 1939 c 219 § 6; RRS § 6266-6.]

**15.44.060 Powers and duties.** The commission shall have the power and duty to:

- (1) Elect a chairman and such other officers as it deems advisable, and adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers, which shall have the effect of law when not inconsistent with existing laws;

(2) Administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to effectuate the purpose hereof;

(3) Employ and discharge advertising counsel, advertising agents, and such attorneys, agents, and employees as it deems necessary, and prescribe their duties and powers and fix their compensation;

(4) Establish offices, incur expenses, enter into contracts, and create such liabilities as are reasonable and proper for the proper administration of this chapter;

(5) Investigate and prosecute violations of this chapter;

(6) Conduct scientific research to develop and discover uses for products of milk and its derivatives;

(7) Make in its name such advertising contracts and other agreements as are necessary to promote the sale of dairy products on either a state, national, or foreign basis;

(8) Keep accurate records of all its dealings, which shall be open to public inspection and audit by the regular agencies of the state; and

(9) Conduct the necessary research to develop more efficient and equitable methods of marketing dairy products, and enter upon, singly or in participation with others, the promotion and development of state, national, or foreign markets. [1961 c 11 § 15.44.060. Prior: 1959 c 163 § 13; 1939 c 219 § 8; RRS § 6266-8.]

#### 15.44.070 Rules, regulations and orders, publication.

Every rule, regulation, or order made by the commission shall be filed with the director and published in two legal newspapers, one east of the Cascade mountains and one west thereof, within ten days after it is promulgated, and shall become effective ten days after filing and publication. [1961 c 11 § 15.44.070. Prior: 1939 c 219 § 18; RRS § 6266-18.]

Effective date of rules and regulations: RCW 15.44.070.

**15.44.080 Assessments on milk and cream—Amounts—Increases—Producer referendum.** (1) There is hereby levied upon all milk produced in this state an assessment of 0.6% of class I price for 3.5% butter fat milk as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area; and

(2) Subject to approval by a producer referendum as provided in this section, the commission shall have the further power and duty to increase the amount of the assessment to be levied upon either milk or cream according to the necessities required to effectuate the stated purpose of the commission.

In determining such necessities, the commission shall consider one or more of the following:

(a) The necessities of—

(i) developing better and more efficient methods of marketing milk and related dairy products;

(ii) aiding dairy producers in preventing economic waste in the marketing of their commodities;

(iii) developing and engaging in research for developing better and more efficient production, marketing and utilization of agricultural products;

(iv) establishing orderly marketing of dairy products;

(v) providing for uniform grading and proper preparation of dairy products for market;

(vi) providing methods and means including but not limited to public relations and promotion, for the maintenance of present markets, for development of new or larger markets, both domestic and foreign, for dairy products produced within this state, and for the prevention, modification or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

(vii) restoring and maintaining adequate purchasing power for dairy producers of this state; and

(viii) protecting the interest of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality;

(b) The extent and probable cost of required research and market promotion and advertising;

(c) The extent of public convenience, interest and necessity; and

(d) The probable revenue from the assessment as a consequence of its being revised.

This section shall apply where milk or cream is marketed either in bulk or package. However, this section shall not apply to milk or cream used upon the farm or in the household where produced.

The increase in assessment or any part thereof to be charged producers on milk and cream provided for in this section shall not become effective until approved by fifty-one percent of the producers voting in a referendum conducted by the commission.

The referendum for approval of any increase in assessment or part thereof provided for in this section shall be by secret mail ballot furnished to all producers paying assessments to the commission. The commission shall furnish ballots to producers at least ten days in advance of the day it has set for concluding the referendum and counting the ballots. Any interested producer may be present at such time the commission counts said ballots.

Any proposed increase in assessments by the commission subsequent to a decrease in assessments as provided for in RCW 15.44.130(2) shall be subject to a referendum and approval by producers as herein provided. [1973 1st ex.s. c 41 § 1; 1969 c 60 § 1; 1965 ex.s. c 44 § 1; 1961 c 11 § 15.44.080. Prior: 1959 c 163 § 11; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9, part.]

**15.44.090 Collection of assessments—Lien.** All assessments shall be collected by the first dealer and deducted from the amount due the producer, and all moneys so collected shall be paid to the treasurer of the commission on or before the twentieth day of the succeeding month for the previous month's collections, and deposited by him in banks designated by the commission to the credit of the commission fund. If a dealer fails to remit any moneys so collected, or fails to make deductions for assessments, such sum shall, in addition to penalties provided in this chapter, be a lien on any property owned by him, and shall be reported to the county auditor by the commission, supported by proper



and conclusive evidence, and collected in the manner prescribed for the collection of delinquent taxes. [1961 c 11 § 15.44.090. Prior: 1959 c 163 § 12; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9; part.]

**15.44.100 Records of dealers, shippers—Preservation—Inspection.** Each dealer or shipper shall keep a complete and accurate record of all milk or cream handled by him. The record shall be in such form and contain such information as the commission shall prescribe, and shall be preserved for a period of two years, and be submitted for inspection at any time upon request of the commission or its agent. [1961 c 11 § 15.44.100. Prior: 1959 c 163 § 14; 1939 c 219 § 10; RRS § 6266-10.]

**15.44.110 Reports of dealers, shippers, to commission.** Each dealer and shipper shall at such times as by rule or regulation required, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of dairy products handled, processed, manufactured, delivered, and shipped, and the quantity of all milk and cream delivered to or purchased by such person from the various producers of dairy products or their agents in the state during the period or periods prescribed by the commission. [1961 c 11 § 15.44.110. Prior: 1959 c 163 § 15; 1939 c 219 § 11; RRS § 6266-11.]

**15.44.120 Collection, payment of assessment prior to shipment—Stamps.** No milk or cream may be carried or shipped until the assessment thereon has been collected by the first dealer and receipt issued. All assessments shall be due and payable on milk or cream before it is shipped out of the state.

The commission shall prescribe the method of collection, and for that purpose may require stamps, to be known as dairy products advertising stamps, to be purchased from the commission and attached to the containers, invoices or shipping documents of all milk and cream shipped from the state. The stamps shall be immediately canceled by the dealer upon being so attached, and date of cancellation shall be placed thereon. [1961 c 11 § 15.44.120. Prior: 1959 c 163 § 16; 1939 c 219 § 12; RRS § 6266-12.]

**15.44.130 Research, advertising, educational campaign—Decrease of assessments.** (1) In order to adequately advertise and market Washington dairy products in the domestic, national and foreign markets, and to make such advertising and marketing research and development as extensive as public interest and necessity require, and to put into force and effect the policy of this chapter 15.44 RCW, the commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign, and keep such research, advertising and education as continuous as the production, sales, and market conditions reasonably require.

(2) The commission shall investigate and ascertain the needs of dairy products and producers, the conditions of the markets, and the extent to which public

convenience and necessity require advertising and research to be conducted. If upon such investigation, it shall appear that the revenue from an assessment provided for in RCW 15.44.080 is more than adequate to accomplish the purposes and objects of this chapter, it shall file a request with the director of agriculture showing the necessities of the industry, the extent and probable cost of the required research and advertising, the extent of public convenience, interest and necessity, and the probable revenue from the assessment herein levied and imposed. If such probable revenue is more than the amount reasonably necessary to conduct the research and advertising that the public interest and convenience require to accomplish the objects and purposes hereof, the commission shall decrease the assessment to a sum that the commission shall determine adequate to effectuate the purposes hereof: *Provided*, That no such change shall be made in rate of assessment until the commission shall have filed with the director a full report of such investigations and findings. Such change in assessment shall be effective thirty days after such report is filed. [1969 c 60 § 2; 1961 c 11 § 15.44.130. Prior: 1959 c 163 § 17; 1949 c 185 § 2; 1939 c 219 § 13; Rem. Supp. 1949 § 6266-13.]

**15.44.135 Promotional printing and literature—Contracts.** Promotional printing and literature not restricted by laws relating to public printer, see RCW 15.24.085. Conditions of employment, etc., in contracts, see RCW 15.24.086.

**15.44.140 Authority to enter and inspect records.** The commission through its agents may inspect the premises and records of any carrier, handler, dealer, manufacturer, processor, or distributor of dairy products for the purpose of enforcing this chapter. [1961 c 11 § 15.44.140. Prior: 1939 c 219 § 19; RRS § 6266-19.]

**15.44.150 Nonliability for commission acts.** The state shall not be liable for the acts or on the contracts of the commission, nor shall any member or employee of the commission be liable on its contracts.

All persons employed or contracting under this chapter shall be limited to, and all salaries, expenses and liabilities incurred by the commission shall be payable only from the funds collected hereunder. [1961 c 11 § 15.44.150. Prior: 1939 c 219 § 7; RRS § 6266-7.]

**15.44.160 Enforcement of chapter.** All state and county law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.44.160. Prior: 1939 c 219 § 16; RRS § 6266-16.]

**15.44.170 Penalty.** Whoever violates or aids in the violation of the provisions of this chapter shall be guilty of a gross misdemeanor. [1961 c 11 § 15.44.170. Prior: 1939 c 219 § 14; RRS § 6266-14.]

**15.44.180 Jurisdiction of courts.** The superior courts are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof. [1961 c 11 § 15.44.180. Prior: 1939 c 219 § 15; RRS 6266-15.]

**15.44.900 Purpose of chapter.** This chapter is passed:

(1) In the exercise of the power of the state to protect the public health, to provide for the economic development of the state, to prevent fraudulent practices, to promote the welfare of the state, and stabilize the dairy industry by increasing consumption of dairy products within the state and nation;

(2) Because the dairy products produced in Washington comprise one of the major agricultural crops of Washington, and that therefore the business of marketing and distributing such crop and the expansion of its markets is affected with the public interest;

(3) Because it is necessary and expedient to enhance the reputation of Washington dairy products in domestic and national markets;

(4) Because it is necessary to promote the knowledge of health giving qualities, food and dietetic value of the dairy products of the nation and Washington dairy products in particular, and to expanded development of the dairy industry;

(5) Because Washington dairy products are handicapped by eastbound freight rates, therefore the quality of these products must be impressed upon the consumers of the nation, in order that these handicaps may be overcome;

(6) Because the stabilizing of the dairy industry, the enlargement of its markets, and the increased consumption of dairy products are necessary to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment, and to provide for higher wage scales for agricultural labor and maintenance of our high standard of living;

(7) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only dairy products of the highest standards of quality, the methods and care used in their preparation for market, and the methods of sale and distribution to increase the amount secured by the producer therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of marketing and distribution to the extent that the spread between cost to consumer and the amount received by the producer will be reduced to the minimum absolutely necessary;

(8) To establish a permanent organization to assist and promote the supplying of under-nourished and under-privileged children with the necessary milk and milk products to insure the development of healthy bodies and minds in order that they may develop into useful citizens of the state and nation in the future;

(9) To protect the general public by educating it in reference to the various market classifications of dairy products, the food value and industrial and medicinal uses thereof. [1961 c 11 § 15.44.900. Prior: 1939 c 219 § 1; RRS § 6266-1.]

**15.44.910 Liberal construction.** This chapter shall be liberally construed. [1961 c 11 § 15.44.910. Prior: 1939 c 219 § 17, part; RRS § 6266-17, part.]

## Chapter 15.48 SEED BAILMENT CONTRACTS

### Sections

- 15.48.270 Definitions.  
15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor.  
15.48.290 Payments required to be made by bailor to bailee subject to security interests and agricultural liens.

*Agricultural and vegetable seeds: Chapter 15.49 RCW.*

*Imported seeds, nursery stock, fruit, vegetables, markings on packaging: RCW 17.24.060.*

*Liens, seed: Chapter 60.12 RCW.*

**15.48.270 Definitions.** As used in this chapter:

(1) "Seed bailment contract" means any bailment contract for the increase of agricultural seeds where the bailor retains title to seed, seed stock, plant life and the seed crop resulting therefrom.

(2) "Bailee" is any tenant farmer or landowner or both, who, for an agreed compensation agrees to plant agricultural seeds furnished by the bailor and to care for, cultivate, harvest and deliver to the bailor the seed resulting therefrom.

(3) "Bailor" is any seed contractor who delivers agricultural seed to a bailee under the terms of a seed bailment contract which requires the bailee to plant, care for, cultivate, harvest and deliver the resultant seed crop to the bailor and requires the bailor to pay the bailee the amount of compensation agreed upon in the contract for the bailees' services in producing the seed. [1967 c 114 § 14.]

**Emergency—Effective date—1967 c 114:** The effective date of this section is June 30, 1967, see note following RCW 62A.4-406.

**15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor.** Seed bailment contracts for the increase of agricultural seeds shall not create a security interest under the terms of the Uniform Commercial Code, chapter 62A.9 RCW. No filing, recording or notice of a seed bailment contract shall be required under any of the laws of the state to establish, during the term of a seed bailment contract the validity of any such contracts, nor to establish and confirm in the bailor the title to all seed, seed stock, plant life and the resulting seed crop thereof grown or produced by the bailee under the terms of a bailment contract. [1967 c 114 § 15.]

**Emergency—Effective date—1967 c 114:** The effective date of this section is June 30, 1967, see note following RCW 62A.4-406.

**15.48.290 Payments required to be made by bailor to bailee subject to security interests and agricultural liens.** All payments of money required by the terms of a seed bailment contract to be made by a bailor to a bailee shall be subject to security interests perfected as required by chapter 62A.9 RCW, as amended, and all

agricultural liens provided for and perfected in accordance with Title 60 RCW. [1967 c 114 § 16.]

**Emergency—Effective date—1967 c 114:** The effective date of this section is June 30, 1967, see note following RCW 62A.4-406.

### Chapter 15.49 WASHINGTON STATE SEED ACT

#### Sections

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**15.49.010 Definitions controlling.** For the purpose of this chapter, the definitions set forth in RCW 15.49.020 through 15.49.300 shall be controlling. [1969 c 63 § 1.]

**15.49.020 "Department".** "Department" means the department of agriculture of the state of Washington or its duly authorized representative. [1969 c 63 § 2.]

**15.49.030 "Person".** "Person" means a natural person, individual, firm, partnership, corporation, company, society or association. [1969 c 63 § 3.]

**15.49.040 "Seeds".** "Seeds" mean agricultural or vegetable seeds or other seeds as determined by regulations adopted by the department. [1969 c 63 § 4.]

**15.49.050 "Agricultural seeds".** "Agricultural seeds" include the seeds of grass, forage, cereal, field, turf, legume and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds and mixtures of such seeds, or as determined by regulations adopted by the department. [1969 c 63 § 5.]

**15.49.060 "Vegetable seeds".** "Vegetable seeds" include the seeds of those crops, including truck crops, which are grown in gardens and on farms for canning and freezing purposes and are generally known and sold under the name of vegetable seeds in this state. [1969 c 63 § 6.]

**15.49.070 "Foundation seed", "registered seed", "certified seed".** The terms "foundation seed", "registered seed", and "certified seed" mean seed that has been produced and labeled in compliance with the regulations of the department. [1969 c 63 § 7.]

**15.49.080 "Pure live seed".** "Pure live seed" means a measure of that portion of any lot of seed that consists of live seed and is determined by multiplying the percentage of germination by the percentage of pure seed and dividing by one hundred. [1969 c 63 § 8.]

**15.49.090 "Bulk seed".** "Bulk seed" means seed distributed in a nonpackage form. [1969 c 63 § 9.]

**15.49.100 "Weed seeds".** "Weed seeds" include the seeds of all plants generally recognized as weeds within this state, and includes the seeds of prohibited and restricted noxious weeds as determined by regulations adopted by the department. [1969 c 63 § 10.]

**15.49.110 "Prohibited (primary) noxious weed seeds".** "Prohibited (primary) noxious weed seeds" are the seeds of weeds which when established are highly destructive, competitive and/or difficult to control by cultural or chemical practices. [1969 c 63 § 11.]

**15.49.120 "Restricted (secondary) noxious weed seeds".** "Restricted (secondary) noxious weed seeds" are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices. [1969 c 63 § 12.]

**15.49.130 "Labeling"**. "Labeling" includes labels, and all other written, printed, or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers, and includes representations on invoices. [1969 c 63 § 13.]

**15.49.140 "Advertisement"**. "Advertisement" means all representations, other than on the label, disseminated in any manner, or by any means, relating to seed within the scope of this chapter. [1969 c 63 § 14.]

**15.49.150 "Record"**. "Record" includes all information relating to the handling and distribution of seeds and includes a file sample of each lot of seed distributed. [1969 c 63 § 15.]

**15.49.160 "Stop Sale, Use, and/or Removal Order"**. "Stop Sale, Use, and/or Removal Order" means an administrative order restraining the sale, use, disposition, and movement of a specific amount of seed. [1969 c 63 § 16.]

**15.49.170 "Kind"**. "Kind" means one or more related species or subspecies which singly or collectively is known by one common name: examples are, corn, oats, alfalfa, timothy, etc. [1969 c 63 § 17.]

**15.49.180 "Type"**. "Type" means a group of varieties so nearly similar that the individual varieties cannot be easily differentiated except under special conditions; for example, winter wheat vs. spring wheat. [1969 c 63 § 18.]

**15.49.190 "Variety"**. "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind; for example, merion Kentucky bluegrass vs. park Kentucky bluegrass. [1969 c 63 § 19.]

**15.49.200 "Official sample"**. "Official sample" means any sample of seed taken and designated as official by the department. [1969 c 63 § 20.]

**15.49.210 "Lot"**. "Lot" means a definite quantity of seed identified by a lot number, every portion or bag of which is uniform within recognized tolerances. [1969 c 63 § 21.]

**15.49.220 "Lot number"**. "Lot number" shall identify the producer or dealer and year of production or the year distributed for each lot of seed. This requirement may be satisfied by use of a processor's or dealer's code. [1969 c 63 § 22.]

**15.49.230 "Distribute"**. "Distribute" means to import, consign, offer for sale, hold for sale, sell, barter, or otherwise supply seed in this state. [1969 c 63 § 23.]

**15.49.240 "Dealer"**. "Dealer" means any person who distributes. [1969 c 63 § 24.]

**15.49.250 "Certifying agency"**. "Certifying agency" means (1) an agency authorized under the laws of a state, territory, or possession to officially certify seed, or (2) an agency of a foreign country that adheres to procedures and standards for seed certification comparable to those established under the provisions of this chapter and the regulations adopted thereunder. [1969 c 63 § 25.]

**15.49.260 "Retail"**. "Retail" means to distribute to the ultimate consumer. [1969 c 63 § 26.]

**15.49.270 "Seed labeling registrant"**. "Seed labeling registrant" means a person who has obtained a permit to label seed for distribution in this state. [1969 c 63 § 27.]

**15.49.280 "Screenings"**. "Screenings" mean chaff, seed, weed seed, inert matter, and other materials removed from seed in cleaning or processing. [1969 c 63 § 28.]

**15.49.290 "Treated"**. "Treated" means that the seed has received an application of a pesticide or has been subjected to a process which pesticide or process is designed to reduce, control, or repel certain disease organisms, insects, or other pests attacking such seeds or the seedlings emerging therefrom. Excluded are seeds intended for food or feed use which are treated with pesticides approved for that intended use. [1969 c 63 § 29.]

**15.49.300 "Inoculant"**. "Inoculant" means a commercial preparation containing nitrogen fixing bacteria applied to the seed. [1969 c 63 § 30.]

**15.49.310 Department to administer chapter—Rules and regulations—Guidance of federal seed act.** The department shall administer, enforce, and carry out the provisions of this chapter and may adopt regulations necessary to carry out its purpose. The adoption of regulations shall be subject to a public hearing and all other applicable provisions of chapter 34.04 RCW (Administrative Procedure Act), as enacted and hereafter amended.

The department when adopting regulations in respect to the seed industry shall consult with affected parties, such as growers, processors, and distributors of seed. Any final regulation adopted shall be based upon the requirements and conditions of the industry and shall be for the purpose of promoting the well-being of the purchasers and users of seed as well as the members of the seed industry.

When seed labeling, terms, methods of sampling and analysis, and tolerances are not specifically stated in this chapter or otherwise designated by the department, the department shall, in order to promote uniformity, be guided by officially recognized associations, or regulations under The Federal Seed Act. [1969 c 63 § 31.]

**15.49.320 Labeling of seed containers required—Contents—Exceptions.** (1) Each container of seed distributed in this state for seeding purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label in the English language providing the following information:

(a) Kind, or kind and variety, or kind and type.  
 (b) Lot number.  
 (c) Net weight as required under \*chapter 19.93 RCW as enacted or hereinafter amended.

(d) Name and address of the seed labeling registrant under whose label said seed is distributed within this state.

(e) When seed is treated, or subjected to a process for which a claim is made, the label shall contain:

(i) A word or statement indicating that the seed has been treated and the process the seed has been subjected to.

(ii) The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or a description of the process used.

(iii) The appropriate warning or caution statement for the pesticide used. The skull and cross-bones and the word **POISON** shall be used when the pesticide is highly toxic. This warning shall be conspicuous, and the size of type shall be not less than eight point.

(f) When a claim is made for inoculation the label shall also show the month and year beyond which the inoculant is no longer claimed to be effective.

(g) The name and number of restricted noxious weed seeds per pound.

(2) The label for each container of agricultural seed distributed in the state shall contain the information required in subsection (1) of this section and the following:

(a) For each named crop seed the percentage of germination, exclusive of hard seed;

(b) The percentage of hard seed, if present;

(c) The calendar month and year the test was completed to determine such percentages;

(d) A purity statement which shall include a commonly accepted name of kind, or kind and variety, or kind and type of each crop seed component in excess of five percent of the whole and the percentage by weight of each in the order of its predominance. When more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label;

(e) Percentage by weight of all weed seeds, of inert matter, and of other agricultural seeds (percent other crop) other than those required to be named on the label as components in subsection (2) (d) of this section;

(f) Origin—The state (domestic) or country (foreign) where grown, or if origin unknown, that fact shall be stated. Exceptions may be provided by regulations.

(3) The label for each container of vegetable seed distributed in this state shall contain the kind and variety, the information required in subsection (1) (b) through (g) of this section, and the following:

(a) For packages of more than one pound—

(i) The information in subsection (2) (a), (b), (c), and (d) of this section.

(b) For packages of one pound or less (when seed germination is less than the standards established by the department)—

(i) The information in subsection (2) (a), (b), (c) of this section and the words "below standard."

(4) Specific labeling requirements for kinds of seeds may be adopted in regulations because of individual unique requirements, e.g., bulk grain seed.

(5) The provisions of this section shall not apply:

(a) To seed or grain not intended for seeding purposes, except when labeling, advertising, or other representations indicate that it is suitable for seed by the use of such terms as processed, treated, certified, variety designated or other terms of similar implication.

(b) To seed in a cleaning or processing establishment, or being transported or consigned to such establishment for the purpose of cleaning or processing: *Provided*, That any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this chapter.

(c) To seed weighed and packaged, in the presence of the purchaser, from a bulk container which is labeled in accordance with this chapter.

(d) To seed transported from one warehouse to another without transfer of title, when each container is plainly marked or identified with a lot number. Upon request of the department, required label information shall be made available. [1969 c 63 § 32.]

**\*Reviser's note:** Chapter 19.93 RCW was repealed by 1969 c 67 § 56. Later enactment, see chapter 19.94 RCW.

**15.49.330 Screenings—Removal permit required—Authorization to treat screenings.** (1) All screenings, removed in the cleaning or processing of seeds, which contain prohibited or restricted noxious weed seeds shall be removed from the seed processing plant only under permit issued by the department. It shall be unlawful to distribute, give away, or use screenings for feeding purposes unless the screenings have been ground and/or treated in such a way as to destroy the viability of the noxious weed seeds and have met the requirements of the Washington commercial feed act.

(2) Every processing or cleaning establishment desiring to grind and/or treat screenings to destroy the viability of weed seeds as required herein, shall submit evidence satisfactory to the department concerning the effectiveness of the method selected. After investigation, the department may issue a permit of authorization to which shall be attached such conditions governing the destruction of weed seed. Such permit of authorization shall be conspicuously displayed in the place of business for which it is issued. [1969 c 63 § 33.]

**15.49.340 Violations—Distributing mislabeled seed—Detaching, altering, etc., labels—Hindering or obstructing department—Screenings.** It shall be unlawful for any person:

(1) To distribute mislabeled seed. Seed shall be deemed to be mislabeled:

(a) If the germination test, required by RCW 15.49.320 has not been completed within the following time limitations:

(i) Eight months for seeds distributed to a dealer for resale.

(ii) Eighteen months for seeds distributed by a dealer at retail.

(iii) When seeds are packaged under conditions which the department has determined will prolong their viability, the department may designate a longer period than otherwise specified in this section, and may require additional labeling to maintain identification of seed packaged under such conditions.

(b) If it is not labeled in accordance with RCW 15.49.320 or regulations adopted thereunder: *Provided*, That no person shall be subject to the penalties of this chapter for having distributed seed which is incorrectly labeled or misrepresented as to kind, type, variety, or origin and which seed cannot be identified by examination thereof, if he possesses, at the time of notification of the violation, an invoice or a declaration from a distributor or grower giving kind, type, variety, or origin, and if he has taken such other precautions necessary to insure the identity to be that stated.

(c) If advertising or labeling is false or misleading in any way.

(d) If composition or quality falls below or differs from that which it is purported or represented to be by its labeling.

(e) If it consists of or contains prohibited noxious weed seeds.

(f) If it consists of or contains restricted noxious weed seeds in excess of the number declared on the label: *Provided*, That the maximum number of restricted noxious weed seeds per pound shall not exceed that amount established by regulations.

(g) If the total weed seed content is in excess of two percent.

(h) If it contains less than twenty-five percent pure live seed.

(i) If its labeling represents it to be foundation, registered or certified seed unless it has been inspected and tagged accordingly by a certifying agency meeting certification standards of the department.

(j) If a white, purple, or blue colored tag is attached which is of similar size and format to the official certification tag which could be mistaken for the official certification tag.

(2) To detach, alter, deface, or destroy any seed label or alter or substitute seed in a manner that may defeat the purpose of this chapter.

(3) To hinder or obstruct the department in the performance of its duties under this chapter.

(4) To engage in the cleaning of seeds, entered by growers for certification, without first having obtained a seed processing permit from the department.

(5) To distribute screenings for seeding purposes. [1969 c 63 § 34.]

**15.49.350 Permit to process certified seed.** Upon application for a permit to process certified seed, the department shall inspect the seed processing facilities of

the applicant to determine that genetic purity and identity of seed processed can be maintained. Upon approval, the department shall issue a seed processing permit, for each regular place of business, which shall be conspicuously displayed in the office of such business. The permit shall remain in effect as long as the facilities comply with the department's requirements for such permit. [1969 c 63 § 35.]

**15.49.360 Records—Maintenance—Availability of records and samples for inspection.** The seed labeling registrant whose name appears on the label shall: (1) Keep, for a period of two years after the date of final disposition, complete records of each lot of seed distributed: *Provided*, That the file sample of each lot of seed distributed need be kept for only one year.

(2) Make available, during regular working hours, such records and samples for inspection by the department. [1969 c 63 § 36.]

**15.49.370 Department's enforcement authority.** The department shall have the authority to:

(1) Sample, inspect, make analysis of, and test seeds distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such seeds are in compliance with the provisions of this chapter. The methods of sampling and analysis shall be those adopted by the department from officially recognized sources. The department, in determining for administrative purposes whether seeds are in violation of this chapter, shall be guided by records, and by the official sample obtained and analyzed as provided for in this section. Analysis of an official sample, by the department, shall be accepted as prima facie evidence by any court of competent jurisdiction.

(2) Enter any dealer's or seed labeling registrant's premises at all reasonable times in order to have access to seeds and to records. This includes the determination of the weight of packages and bulk shipments.

(3) Adopt and enforce regulations for certifying seeds, and shall fix and collect fees for such service. The director of the department may appoint persons as agents for the purpose of assisting in the certification of seeds.

(4) Adopt and enforce regulations for inspecting, grading, and certifying growing crops of seeds; inspect, grade, and issue certificates upon request; and fix and collect fees for such services.

(5) Make purity, germination and other tests of seed on request, and fix and collect charges for the tests made.

(6) Establish and maintain seed testing facilities, employ qualified persons, and incur such expenses as may be necessary to comply with the intent of this chapter.

(7) Adopt a list of the prohibited and restricted noxious weed seeds.

(8) Publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production.

(9) Deny, suspend, or revoke licenses, permits and certificates provided for in this chapter subsequent to a hearing, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended, in any case in which the department finds that there has been a failure or refusal to comply with the provisions of this chapter or regulations adopted hereunder. [1969 c 63 § 37.]

**15.49.380 Dealer's license to distribute seeds.** (1) No person shall distribute seeds without having obtained a dealer's license for each regular place of business: *Provided*, That no license shall be required of a person who distributes seeds only in sealed packages of eight ounces or less, packed by a seed labeling registrant and bearing the name and address of the registrant: *Provided further*, That a license shall not be required of any grower selling seeds of his own production exclusively. Such seed sold by such grower must be properly labeled as provided in this chapter. Each dealer's license shall cost ten dollars, shall be issued by the department, shall bear the date of issue, shall expire on January 31st of each year and shall be prominently displayed in each place of business.

(2) Persons custom processing and/or custom treating seeds for others for remuneration shall be considered dealers for the purpose of this chapter.

(3) Application for a license to distribute seed shall be on a form prescribed by the department and shall include the name and address of the person applying for the license, the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds, and any other reasonable and practical information prescribed by the department necessary to carry out the purposes and provisions of this chapter. [1969 c 63 § 38.]

**15.49.390 Renewal of dealer's license.** If an application for renewal of the dealer's license provided for in RCW 15.49.380, is not filed prior to February 1st of any one year, an additional fee of five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not apply if the applicant furnishes an affidavit that he has not acted as a distributor of seed subsequent to the expiration of his prior license. [1969 c 63 § 39.]

**15.49.400 Seed labeling permit.** (1) No person shall label seed for distribution in this state without having obtained a seed labeling permit. The seed labeling registrant shall be responsible for the label and the seed contents. The application for a seed labeling permit shall be submitted to the department on forms furnished by the department, and shall be accompanied by a fee of twenty dollars per applicant. The application form shall include the name and address of the applicant, a label or label facsimile, and any other reasonable and practical information prescribed by the department. Upon approval, the department shall issue said permit to the applicant. All permits expire on January 31st of each year.

(2) If an application for renewal of the seed labeling permit provided for in this section is not filed prior to February 1st of any one year, an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the license shall be issued: *Provided*, That such additional fee shall not apply if the applicant furnishes an affidavit that he has not labeled seed for distribution in this state subsequent to the expiration of his prior permit. [1969 c 63 § 40.]

**15.49.410 "Stop sale, use or removal orders"—Seizure—Condemnation.** (1) When the department has determined or has probable cause to suspect that any lot of seed or screenings is mislabeled and/or is being distributed in violation of this chapter or regulations adopted hereunder, it may issue and enforce a written or printed "stop sale, use or removal order" warning the distributor not to dispose of the lot of seed or screenings in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of seed or screenings so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained, the department may bring proceedings for condemnation.

(2) Any lot of seed or screenings not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the locality in which the seed or screenings are located. In the event the court finds the seed or screenings to be in violation of this chapter and orders the condemnation of said seed or screenings, such lot of seed or screenings shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state: *Provided*, That in no instance shall the court order such disposition of said seed or screenings without first having given the claimant an opportunity to apply to the court, within twenty days, for the release of said seed or screenings or for permission to process or relabel it to bring it into compliance with this chapter. [1969 c 63 § 41.]

**15.49.420 Damages precluded.** No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under RCW 15.49.410 if the court finds that there was probable cause for such action. [1969 c 63 § 42.]

**15.49.430 Penalties.** Any person convicted of violating any of the provisions of this chapter, or the regulations adopted hereunder, shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second or subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 c 63 § 43.]

**15.49.440 Minor violations—Warning notices.** Nothing in this chapter shall be considered as requiring the department to report for prosecution or to stop the



sale of seed for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing. [1969 c 63 § 44.]

**15.49.450 Prosecution of violators—Prior opportunity for hearing.** It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the accused distributor or person to present his view, in writing or orally, to the department. [1969 c 63 § 45.]

**15.49.460 Injunctions.** The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any regulations promulgated under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1969 c 63 § 46.]

**15.49.470 Fees, disposition—Fees, fines, penalties and forfeitures of justice courts, remittance.** All fees collected under the provisions of this chapter shall be paid to the state treasurer to be deposited in the seed fund account in the state general fund as provided for in RCW 43.79.330, as is now or hereafter amended, to be used only in the enforcement of this chapter. All moneys collected under the provisions of RCW 15.48.010 through 15.48.260 remaining in such account on July 1, 1969, shall likewise be used only in the enforcement of this chapter: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 13; 1969 c 63 § 47.]

**15.49.480 Cooperation and agreements with other agencies.** The department may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1969 c 63 § 48.]

**15.49.900 Existing liabilities not affected.** The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1969. [1969 c 63 § 49.]

**15.49.910 Continuation of prior licenses.** All licenses in effect under sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900 on July 1, 1969 shall continue in full force and effect until January 31, 1970. Any license that has been paid on July 1, 1969

under the requirements of any prior act shall not be refunded. [1969 c 63 § 50.]

**15.49.920 Effective date—1969 c 63.** The effective date of this 1969 act is July 1, 1969. [1969 c 63 § 51.]

**15.49.930 Continuation of rules adopted pursuant to repealed sections—Adoption, amendment or repeal.** The repeal of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900 and the enactment of this 1969 act shall not be deemed to have repealed any regulations adopted under the provisions of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900, and in effect immediately prior to such repeal and not inconsistent with the provisions of this 1969 act. For the purpose of this 1969 act, it shall be deemed that such rules have been adopted under the provisions of this 1969 act pursuant to chapter 34.04 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after the effective date of this 1969 act shall be subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended, concerning the adoption of rules. [1969 c 63 § 52.]

**15.49.940 Short title.** RCW 15.49.020 through 15.49.950 shall be known as the "Washington State Seed Act." [1969 c 63 § 53.]

**15.49.950 Severability—1969 c 63.** If any section or provision of this 1969 act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1969 c 63 § 55.]

## Chapter 15.52

### WASHINGTON ANIMAL REMEDY ACT

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**15.52.010 Definitions.** As used in this chapter:

"Domestic animals" includes all species of animals and fowls under control of man and adapted to his use or pleasure;

"Label" means any written, printed, or graphic matter upon any can, sack, or any other container of livestock remedy;

"Livestock remedies" includes all foods, medicines and other substances sold as preventive, inhibitive, or curative medicines, or for their stimulating, invigorating or other powers, for domestic animals, as such remedies are defined in the United States Pharmacopoeia.

Exclusive of the definitions provided herein, the definitions of livestock remedies shall be as defined in the official publication of the Pharmacopoeia of the United States of America as of June 1, 1949. The director is hereby authorized to amend, revise, or add to said definitions and methods of analysis whenever he shall find the same to be necessary to prevent misbranding, adulteration or other deviation from the standards prescribed by this chapter. [1961 c 11 § 15.52.010. Prior: (i) 1939 c 211 § 5; RRS § 7016-5. (ii) 1939 c 211 § 6; RRS § 7016-6. (iii) 1949 c 167 § 1; 1939 c 211 § 9; Rem. Supp. 1949 § 7016-9. (iv) 1949 c 167 § 2, part; 1939 c 211 § 33, part; Rem. Supp. 1949 § 7016-33, part. (v) 1939 c 211 § 39; RRS § 7016-39. (vi) 1939 c 211 § 42; RRS § 7016-42. (vii) 1939 c 211 § 43; RRS § 7016-43. (viii) 1939 c 211 § 44; RRS § 7016-44.]

**15.52.020 Official chemists of the department.** The chemist of the agricultural experiment station of Washington State University and the dean of the college of pharmacy of the University of Washington shall be the official chemists of the department and they shall, without compensation other than their expenses necessarily incurred in the performance of such work, analyze all substances that the director may send to them, and report to him without unnecessary delay, the results of an analysis, and when called upon by the director they or any of the additional chemists hereafter provided, shall assist in any prosecution for the violation of any law pertaining to the department. [1961 c 11 § 15.52.020. Prior: 1939 c 211 § 16; RRS § 7016-16.]

**15.52.030 Additional chemists.** The director may appoint one or more competent graduate chemists to serve as additional chemists, who may perform any of the duties required of and under the supervision of the official chemists, and whose compensation shall be fixed by the director. [1961 c 11 § 15.52.030. Prior: 1939 c 211 § 17; RRS § 7016-17.]

**15.52.040 Preference of chemists.** The director may submit livestock remedies, preferably to the chemist at Washington State University. [1961 c 11 § 15.52.040. Prior: 1939 c 211 § 18; RRS § 7016-18.]

**15.52.050 Right of entry—Obstructing, unlawful.** The director shall have access to any factory or establishment selling or offering for sale or distributing any livestock remedy, to inspect and obtain samples. It shall be unlawful to obstruct or interfere with the director in

the performance of any of his duties hereunder. [1961 c 11 § 15.52.050. Prior: (i) 1939 c 211 § 19; RRS § 7016-19. (ii) 1939 c 211 § 20; 1919 c 101 § 8; 1909 c 201 § 9; RRS 7016-20.]

**15.52.060 Sample taking for analysis.** The director may take samples of livestock remedies for analysis as follows:

(1) Where the product is packed in bulk or sack the sample shall not exceed two pounds, shall be taken from a parcel or number of packages which constitute not less than ten percent of the entire lot being sampled, and shall be taken in the presence of the party in interest or his representative. It shall be thoroughly mixed, divided into two equal parts, and one part given to the party in interest or his representative, and the other to a chemist of the department; or

(2) Where the lot to be sampled is not packed in bulk or sack, the sample shall be one or more containers from each lot or parcel to be sampled. [1961 c 11 § 15.52.060. Prior: 1939 c 211 § 21, part; RRS § 7016-21, part.]

**15.52.070 Labeling samples—Findings—Copy to owner.** On each such sample shall be placed a label stating the name or brand of material sampled and the time and place of taking the sample. The label shall be signed by the director and party in interest or his representative.

The chemist making the analysis shall return to the director two certified copies of his findings, one of which shall be forwarded to the party in interest.

Such findings shall be admissible in any proceeding involving this chapter as prima facie evidence of the facts therein set forth. [1961 c 11 § 15.52.070. Prior: 1939 c 211 § 21, part; RRS § 7016-21, part.]

**15.52.080 Brands—When distinct.** Livestock remedies shall be considered as distinct brands when differing either in guaranteed analysis, ingredients, trademark, name, or any other characteristic method of marking. [1961 c 11 § 15.52.080. Prior: 1939 c 211 § 10; RRS § 7016-10.]

**15.52.090 Alteration, forgery, unlawful use of brands.** No person shall alter, destroy, or remove, or forge, simulate, or falsely represent or use, without authority, any identification device used by the director in carrying out the provisions of this chapter. [1961 c 11 § 15.52.090. Prior: (i) 1939 c 211 § 12; RRS § 7016-12. (ii) 1939 c 211 § 13; RRS § 7016-13.]

**15.52.100 Injurious, worthless, seized products—Disposal prohibited.** No person shall distribute, sell, display, or offer for sale any livestock remedy which contains injurious ingredients, or which is injurious when used, fed, or applied as directed, or which is known to be of little or no value for the purpose for which it was intended; nor make any false or misleading claims in connection therewith; nor in any manner dispose of any such product seized under RCW 15.52.170. [1961 c 11 § 15.52.100. Prior: (i) 1939 c 211 § 11; 1919 c 101 § 6;

RRS § 7016–11. (ii) 1939 c 211 § 14; RRS § 7016–14. (iii) 1949 c 167 § 4; 1939 c 211 § 37; Rem. Supp. 1949 § 7016–37.]

**15.52.110 Registration of brands—Fees—Renewal.** No person shall sell, offer to sell, or distribute any brand of livestock remedy unless such brand has been registered with the director on a form provided by him, showing the ingredients and the guaranteed analysis, and a registration fee has been paid, in an amount to be fixed by the director not in excess of six dollars for each brand. Each such person shall, on or before the first day of April of each year pay to the director a registration fee in an amount to be fixed by him, not in excess of six dollars, for each brand manufactured or mixed. [1961 c 11 § 15.52.110. Prior: 1943 c 263 § 1, part; 1939 c 211 § 23, part; Rem. Supp. 1943 § 7016–23, part.]

**15.52.120 Application for registration—Label contents—Exception.** Application for registration of a livestock remedy shall have attached thereto a true copy of the label to be used on the container and a list of the ingredients contained in the product, except that any livestock remedy licensed under the Federal Virus, Serum, and Toxin Act of July 1, 1902, or under the Federal Virus, Serums, Toxins, Antitoxins, and Analogous Products Act of March 4, 1913, shall be exempt from registration under this chapter. [1961 c 11 § 15.52.120. Prior: (i) 1939 c 211 § 39; RRS § 7016–39. (ii) 1939 c 211 § 40; RRS § 7016–40.]

**15.52.130 Investigation period—Sales prohibited during.** The director shall have ninety days after the receipt of the application for registration of such products not previously registered, in which to investigate the claims made by the applicant as to the efficacy of the product and to conduct experiments to determine whether the product is harmful or is of the claimed value for the purpose intended. At the end of ninety days, if the director has not notified the applicant that a hearing will be held or has not registered the product, the product shall be registered, and a certificate of registration issued. The applicant shall not sell the product until such certificate of registration has been issued. [1961 c 11 § 15.52.130. Prior: 1939 c 211 § 41; RRS § 7016–41.]

**15.52.140 Rules, regulations by director.** The director may prescribe and enforce such reasonable rules and regulations and such definitions relating to livestock remedies as he deems necessary to carry into effect the full intent and meaning of this chapter. [1961 c 11 § 15.52.140. Prior: 1939 c 211 § 15, part; 1919 c 101 § 9, part; 1909 c 201 § 10, part; RRS 7016–15, part.]

**15.52.150 Refusal to register—Notice and hearing.** After due notice to the applicant and a hearing the director may refuse to register the brand of any such product which is detrimental or injurious in effect when applied, fed or used as directed; or which is known to be of little or no value for the purpose intended; or as

to which false or misleading claims are made; or which does not comply with the provisions of this chapter or the regulations prescribed by him. [1961 c 11 § 15.52.150. Prior: (i) 1939 c 211 § 15, part; 1919 c 101 § 9, part; 1909 c 201 § 10, part; RRS § 7016–15, part. (ii) 1939 c 211 § 28, part; RRS § 7016–28, part.]

**15.52.160 Cancellation of registration—Notice and hearing.** After due notice to the registrant and a hearing the director may cancel the registration of the brand of any such product which is detrimental or injurious in effect when applied, fed or used as directed; or which product is known to have little or no value for the purpose intended; or as to which false or misleading claims are made or implied; or when the registrant violates any of the provisions of this chapter. [1961 c 11 § 15.52.160. Prior: 1939 c 211 § 28, part; RRS § 7016–28, part.]

**15.52.170 Seizure of prohibited products—Notice—Contents.** The director may seize and take into his possession any such product the brand of which has not been registered as herein required, or the sale of which is for any reason prohibited hereunder, and apply to the superior court for an order authorizing him to sell or otherwise dispose of the same, and apply the proceeds to the general fund.

He shall give notice to the person in whose possession the seized product was found, or to the consignee thereof if found in the possession of a common carrier, stating the seizure, the reasons therefor, and a day certain when the application will be brought up for a hearing before the court, which day shall not be less than ten days after service of the notice, unless an earlier date is agreed upon by all parties concerned. [1961 c 11 § 15.52.170. Prior: 1939 c 211 § 22, part; RRS § 7016–22, part.]

**15.52.180 Hearing—Evidence.** At the hearing such person or consignee may show cause why the application should not be granted. Affidavits and oral testimony may be introduced by any party. Possession of such product shall be prima facie evidence of an intent to keep or ship the product in violation of the provisions of this chapter. [1961 c 11 § 15.52.180. Prior: 1939 c 211 § 22, part; RRS § 7016–22, part.]

**15.52.320 Use of funds collected.** All money collected as fees for brand registrations hereunder shall be deposited in a special account of the general fund of the state treasury known as the feed and fertilizer account, and used exclusively for the maintenance and enforcement of this chapter, except that not to exceed fifteen percent of said registration fees may, with the consent of the director, be used to purchase equipment and materials to facilitate testing and analyzing required herein. [1961 c 11 § 15.52.320. Prior: (i) 1943 c 263 § 1, part; 1939 c 211 § 23, part; Rem. Supp. 1943 § 7016–23, part. (ii) 1939 c 211 § 25, part; RRS § 7016–25, part. (iii) 1939 c 211 § 27; RRS § 7016–27.]

**15.52.330 Penalty.** Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and fined for the first offense not to exceed one hundred dollars, and for each subsequent offense not to exceed five hundred dollars. [1961 c 11 § 15.52.330. Prior: 1939 c 211 § 56; RRS § 7016-56.]

**15.52.340 Duty of prosecuting attorney.** The prosecuting attorneys in their respective counties shall prosecute actions under this chapter on request of the director. [1961 c 11 § 15.52.340. Prior: 1939 c 211 § 57; RRS § 7016-57.]

**15.52.900 Short title.** This chapter may be cited as the "Washington animal remedy act". [1961 c 11 § 15.52.900. Prior: 1959 c 223 § 1.]

### Chapter 15.53 COMMERCIAL FEED

#### Sections

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**15.53.901 Definitions.** For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(2) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association.

(3) "Distribute" means to offer for sale, hold for sale, sell, or barter, commercial feed, or to supply, furnish or otherwise provide commercial feed to a contract feeder.

(4) "Distributor" means any person who distributes.

(5) "Sell" or "sale" includes exchange.

(6) "Commercial feed" means all materials including customer-formula feed which are distributed for use as

feed or for mixing in feed, for animals other than man except:

(a) Unmixed seed, whole or processed, made directly from the entire seed;

(b) Unground hay, straw, stover, silage, cobs, husks, and hulls when not mixed with other materials;

(c) Individual chemical compounds when not mixed with other materials; or

(d) Bona fide experimental feeds, on which accurate records and experimental programs are maintained.

(7) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(8) "Customer-formula feed" means a mixture of commercial feed and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder.

(9) "Brand" means the term, design, trademark, or other specific designation under which an individual commercial feed is distributed in this state.

(10) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(11) "Ton" means a net weight of two thousand pounds avoirdupois.

(12) "Percent" or "percentage" means percentage by weight.

(13) "Official sample" means any sample of feed taken by the department, obtained and analyzed as provided in RCW 15.53.9024.

(14) "Contract feeder" means an independent contractor, or any other person who feeds commercial feed to animals pursuant to an oral or written agreement whereby such commercial feed is supplied, furnished or otherwise provided to such person by any distributor and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product: *Provided*, That it shall not include a bona fide employee of a manufacturer or distributor of commercial feed.

(15) "Retail" means to distribute to the ultimate consumer. [1965 ex.s. c 31 § 2. Prior acts on this subject: 1961 c 15 §§ 15.53.010 through 15.53.900; 1953 c 80.]

#### 15.53.9012 Administration and administrative rules.

The department shall administer, enforce and carry out the provisions of this chapter and may adopt rules necessary to carry out its purpose. The adoption of rules shall be subject to a public hearing and all other applicable provisions of chapter 34.04 RCW (Administrative Procedure Act), as enacted or hereafter amended.

The director when adopting rules in respect to the feed industry shall consult with affected parties, such as manufacturers and distributors of commercial feed and any final rule adopted shall be designed to promote orderly marketing and shall be reasonable and necessary and based upon the requirements and condition of the industry and shall be for the purpose of promoting the well-being of the members of the feed industry as well as the well-being of the purchasers and users of feed

and for the general welfare of the people of the state. [1965 ex.s. c 31 § 3.]

*Continuation of rules adopted under prior law: RCW 15.53.9052.*

**15.53.9014 Registration of feeds—Application—Renewal—Fees—May be refused.** (1) Each commercial feed shall be registered with the department and such registration shall be renewed annually before such commercial feed may be distributed in this state: *Provided*, That customer–formula feeds are exempt from such registration.

(a) The first and original application for a brand registration for a commercial feed, under the provisions of this chapter, shall be accompanied by a registration fee of ten dollars.

(b) Each annual renewal of a brand registration for a commercial feed shall be accompanied by a renewal fee of five dollars.

(c) Any person who distributes a commercial feed in packages of less than ten pounds shall pay an annual registration fee of ten dollars on each such commercial feed so distributed: *Provided*, That no inspection fee shall be collected on packages of less than ten pounds of the commercial feed so registered.

(2) The application for registration shall be on forms provided by the department.

(3) The department may require that such application be accompanied by a label and/or other printed matter describing the product. All registrations issued on or after January 1, 1966, shall be renewable as provided in (1) (b) of this section unless such registration is canceled by the department or it has called for a new registration, or unless canceled by the registrant.

(4) The application shall include the information required by subsections (1) (b) through (1) (e) of RCW 15.53.9016.

(5) A distributor shall not be required to register any brand of commercial feed which is already registered under the provisions of this chapter by any other person.

(6) Changes in the guarantee of either chemical or ingredient composition of a commercial feed registered under the provisions of this chapter may be permitted provided there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which designed.

(7) The department is empowered to refuse registration of any application not in compliance with the provisions of this chapter and to cancel any registration subsequently found not to be in compliance with any provisions of this chapter: *Provided*, That no registration shall be refused or canceled until the registrant shall have been given opportunity to be heard before the department and to amend his application in order to comply with the requirements of this chapter. [1965 ex.s. c 31 § 4.]

**15.53.9016 Labeling.** (1) Any commercial feed registered with the department and distributed in this state shall be accompanied by a legible label bearing the following information:

(a) The net weight as required under chapter 19.94 RCW as enacted or hereinafter amended.

(b) The name or brand under which the commercial feed is distributed.

(c) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list shall include the following if added: Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the department. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the department. Products distributed solely as mineral and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat, and fiber.

(d) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.

(e) The name and principal address of the person responsible for distributing the commercial feed.

(2) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at time of delivery.

(3) A customer–formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

(a) Name and address of the mixer;

(b) Name and address of the purchaser;

(c) Date of sale; and

(d) Brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(4) If a commercial feed contains a nonnutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or which is intended to affect the structure or any function of the animal body, the department may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

(5) A customer–formula feed shall be considered to be in violation of this chapter if it does not conform to the invoice labeling. Upon request of the department it shall be the duty of the person distributing the customer–formula feed to supply the department with a copy of the invoice which represents that particular feed: *Provided*, That such person shall not be required to

keep such invoice for a period of longer than six months. [1965 ex.s. c 31 § 5.]

**15.53.9018 Inspection fees.** (1) On or after October 1, 1965, there shall be due and owing to the department an inspection fee of four cents per ton on all commercial feed distributed in this state. Such inspection fee shall be paid by any person who distributes twenty-five tons or more of commercial feed in this state in any calendar year: *Provided*, That when more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior distributor of the feed: *And provided further*, That no inspection fee shall be paid on that part of any commercial feed on which an inspection fee has been paid to the department, or any commercial feed which is shipped out of state.

(2) The distributor of any commercial feed to a consumer in this state shall:

(a) File, not later than the last day of January, April, July, and October of each year, a quarterly statement under oath, setting forth the number of net tons of commercial feed distributed in this state during the preceding calendar quarter; and upon filing such statement shall pay the inspection fee at the rate stated in subsection (1) hereof: *Provided*, That upon permission of the department, an annual statement under oath may be filed by any person distributing within the state less than twenty-five tons per quarter during any calendar year, and upon filing such statement such person shall pay the inspection fee at the rate stated in subsection (1) hereof;

(b) Keep such reasonable and practical records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department shall have the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute a violation of this chapter.

(3) Inspection fees which are due and owing and have not been remitted to the department within thirty days following the due date shall have a collection fee of ten percent added to the amount due when payment is finally made. The assessment of this collection fee shall not prevent the department from taking other actions as provided for in this chapter.

(4) Any commercial feed purchased by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use shall be subject to all the provisions of this chapter, including inspection fees. [1967 c 240 § 32; 1965 ex.s. c 31 § 6.]

**Severability—1967 c 240:** See note following RCW 43.23.010.

**15.53.902 Adulteration.** It shall be unlawful for any person to distribute an adulterated feed. A commercial feed shall be deemed to be adulterated:

(1) If any poisonous, deleterious, or nonnutritive ingredient has been added in sufficient amount to render

it injurious to health when fed in accordance with directions for use on the label;

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom and/or any less valuable substance added;

(3) If it contains viable primary noxious weed seeds in excess of one per pound, or if it contains viable secondary noxious weed seeds in excess of twenty-five per pound. The primary and secondary noxious weed seeds shall be those as named pursuant to the provisions of \*chapter 15.48 RCW as enacted or hereafter amended and rules adopted thereunder. [1965 ex.s. c 31 § 7.]

**\*Reviser's note:** RCW 15.48.010 through 15.48.260, 15.48.900 were repealed by 1969 c 63 § 54. Later enactment, see chapter 15.49 RCW.

**15.53.9022 Misbranding.** It shall be unlawful for any person to distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If it is distributed under the name of another feed;

(3) If it is not labeled as required in RCW 15.53.9016 and in regulations prescribed under this chapter;

(4) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department. In the adopting of such regulations the department may consider commonly accepted definitions such as those issued by nationally recognized associations or groups of feed control officials;

(5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(6) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling. [1965 ex.s. c 31 § 8.]

**15.53.9024 Official samples.** (1) It shall be the duty of the department to sample, inspect, make analysis of, and test commercial feed distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such feeds are in compliance with the provisions of this chapter. The department is authorized to stop any commercial vehicle transporting feed on the public highways and direct it to the nearest scales approved by the department to check weights of feeds being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises including any vehicle of transport at all reasonable times in order to have access to commercial feed and to records relating to their distribution. This includes the determining of the weight of packages and bulk shipments.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a feed is deficient in any component, shall be guided solely by the official sample as defined in RCW 15.53.901(13) and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made the results of analysis shall be forwarded by the department to the distributor and to the purchaser if known. Upon request and within thirty days the department shall furnish to the distributor a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [1965 ex.s. c 31 § 9.]

*Prosecutions, official analysis as evidence: RCW 15.53.904.*

**15.53.9026 Retail distributor's license—Required—Exceptions.** No person shall distribute commercial feed at retail without first having obtained an annual license from the department which shall expire on the thirty-first day of December. A separate license shall be required for each establishment or vehicle used by the applicant to sell commercial feed at retail: *Provided*, That such license shall not be required of, (1) any vehicle used by a licensee merely in delivering commercial feed, (2) any dealer as to his sales of foods for domestic household pets, such as dogs, cats, and birds, and (3) any dealer as to his sales of commercial feeds in packages of less than ten pounds. [1967 c 240 § 33; 1965 ex.s. c 31 § 10.]

**Severability—1967 c 240:** See note following RCW 43.23.010.

**15.53.9028 Retail distributor's license—Application—Issuance.** Application for a license to distribute feed at retail shall be on a form prescribed by the department and shall include the following:

(1) The full name of the person applying for the license;

(2) If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds;

(5) Any other reasonable and practical information prescribed by the department necessary to carry out the purposes and provisions of this chapter.

The department shall issue a license to an applicant upon its satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required license fee. [1965 ex.s. c 31 § 11.]

**15.53.903 Retail distributor's license—Annual license fee.** The application for an annual license to distribute feed at retail shall be accompanied by an annual license fee of ten dollars. [1965 ex.s. c 31 § 12.]

**15.53.9032 Retail distributor's license—Penalty for late renewal.** If an application for renewal of the license provided for in RCW 15.53.9026 is not filed prior to January of any one year, a penalty of five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not acted as a retail feed dealer subsequent to the expiration of his prior license. [1965 ex.s. c 31 § 13.]

**15.53.9034 Retail distributor's license—Denial, suspension, and revocation authorized.** The department is authorized to deny, suspend, or revoke the license provided for in RCW 15.53.9026 subsequent to a hearing, in any case in which it finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [1965 ex.s. c 31 § 14.]

**15.53.9036 Procedure for denial, etc., of license or registration.** All hearings for a denial, suspension, or revocation of any license or registration provided for in this chapter shall be subject to the provisions of chapter 34.04 RCW (The Administrative Procedure Act) concerning contested cases, as enacted or hereafter amended. [1965 ex.s. c 31 § 15.]

**15.53.9038 Department's remedies for noncompliance—"Withdrawal from distribution" order—Condemnation—Seizure.** (1) When the department has determined that any lot of commercial feed is adulterated or misbranded and is being distributed in violation of this chapter or any regulations hereunder it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty days, the department may begin proceedings for condemnation.

(2) Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state: *Provided*, That in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or



for permission to process or relabel said commercial feed to bring it into compliance with this chapter. [1965 ex.s. c 31 § 16.]

**15.53.904 Department's remedies for noncompliance—Penalties—Prosecutions—Injunctions.** (1) Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department in the performance of its duty in connection with the provisions of this chapter, shall be adjudged guilty of a misdemeanor and shall be fined not less than fifty dollars nor more than one hundred dollars for the first violation, and not less than two hundred dollars nor more than five hundred dollars for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the department shall be accepted as prima facie evidence of the composition.

(2) Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the distributor to present his view in writing or orally to the department.

(4) The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond. [1965 ex.s. c 31 § 17.]

*Analysis of official sample as evidence: RCW 15.53.9024.*

**15.53.9042 Department to publish distribution information, production data and analyses comparison.** The department shall publish at least annually, in such forms as it may deem proper, information concerning the distribution of commercial feed, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feed within the state as compared with the analyses guaranteed in the registration and on the label or as calculated from the invoice data for customer-formula feeds: *Provided*, That the information concerning production and use of commercial feeds shall not disclose the operations of any person. [1965 ex.s. c 31 § 18.]

**15.53.9044 Disposition of fees.** All fees collected under the provisions of this chapter shall be paid to the state treasurer to be deposited in the commercial feed account in the state general fund as provided in RCW

43.79.330 to be used only in the enforcement of this chapter. All moneys collected under the provisions of RCW 15.53.010 through 15.53.900 and remaining in such commercial feed account on the effective date of this chapter, shall be used in enforcement of this chapter. [1965 ex.s. c 31 § 19.]

**15.53.9046 Cooperation with other entities.** The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out the purpose and provisions of this chapter. [1965 ex.s. c 31 § 24.]

**15.53.9048 Chapter is cumulative.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 ex.s. c 31 § 20.]

**15.53.905 Repeal of prior law.** Sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and RCW 15.53.010 through 15.53.900 are each repealed. [1965 ex.s. c 31 § 25.]

**Prior liability preserved:** "The enactment of this act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this act." [1965 ex.s. c 31 § 21.]

**Continuation of prior licenses and registrations:** "All registrations and licenses in effect under sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961, and RCW 15.53.010 through 15.53.900 on the effective date of this act shall continue in full force and effect until December 31, 1965. No registration that has already been paid under the requirements of any prior act shall be refunded." [1965 ex.s. c 31 § 23.]

**Effective date—1965 ex.s. c 31:** "The effective date of this act is July 1, 1965." [1965 ex.s. c 31 § 26.] The foregoing annotations apply to RCW 15.53.901 through 15.53.9056.

**15.53.9052 Continuation of rules adopted under prior law.** The repeal of sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and chapter 15.53 RCW and the enactment of this act shall not be deemed to have repealed any rules adopted under the provisions of sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and chapter 15.53 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act. [1965 ex.s. c 31 § 22.]

*Administration and administrative rules: RCW 15.53.9012.*

**15.53.9054 Severability—1965 ex.s. c 31.** If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1965 ex.s. c 31 § 27.]

**15.53.9056 Short title.** This chapter shall be known as the "Washington Commercial Feed Law". [1965 ex.s. c 31 § 1.]

Chapter 15.54
FERTILIZERS, AGRICULTURAL MINERALS AND LIMES

(Washington commercial fertilizer act)

Sections

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15.54.960 Severability—1967 ex.s. c 22.

Lien for furnishing fertilizers, pesticides, weed killers: Chapter 60.22 RCW.

15.54.270 Scope of definitions. Terms used in this chapter shall have the meaning given to them in RCW 15.54.272 through 15.54.302 unless where used the context thereof shall clearly indicate to the contrary. [1967 ex.s. c 22 § 1.]

Effective date—1967 ex.s. c 22: See RCW 15.54.930.

15.54.272 "Commercial fertilizer". "Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for

use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. [1967 ex.s. c 22 § 2.]

15.54.274 "Specialty fertilizer". "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries. [1967 ex.s. c 22 § 3.]

15.54.276 "Bulk fertilizer". "Bulk fertilizer" means commercial fertilizer distributed in a nonpackage form. [1967 ex.s. c 22 § 4.]

15.54.278 "Brand". "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers. [1967 ex.s. c 22 § 5.]

15.54.280 "Guaranteed analysis". (1) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

- Total nitrogen (N) . . . . . percent
Available phosphoric acid (P2O5) . . . . . percent
Soluble potash (K2O) . . . . . percent

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(2) For unacidulated mineral phosphatic materials and basic slag, the guaranteed analysis shall contain both total and available phosphoric acid and the degree of fineness. For bone, tankage, manipulated animal and vegetable manures, and other organic phosphatic materials, the guaranteed analysis shall contain total phosphoric acid.

(3) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as permitted or required by regulation of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(4) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the minimum total neutralizing power expressed in terms of calcium carbonate; and the percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve.

(5) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate (CaSO4 . 2H2O) shall be given along with the percentage of total sulfur. [1967 ex.s. c 22 § 6.]

15.54.282 "Grade". "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis", unless otherwise allowed by a regulation adopted by the department. [1967 ex.s. c 22 § 7.]

15.54.284 "Total nutrients". "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis. [1967 ex.s. c 22 § 8.]

**15.54.286 "Lime".** "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium and/or magnesium carbonate, hydroxide, or oxide, singly or combined. [1967 ex.s. c 22 § 9.]

**15.54.288 "Ton".** "Ton" means the net weight of two thousand pounds avoirdupois. [1967 ex.s. c 22 § 10.]

**15.54.290 "Percent", "percentage".** "Percent" or "percentage" means the percentage by weight. [1967 ex.s. c 22 § 11.]

**15.54.292 "Department".** "Department" means the department of agriculture of the state of Washington or its duly authorized representative. [1967 ex.s. c 22 § 12.]

**15.54.294 "Person".** "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association. [1967 ex.s. c 22 § 13.]

**15.54.296 "Customer-formula fertilizer".** "Customer-formula fertilizer" means a mixture of commercial fertilizer and/or materials of which each batch is mixed according to the specific instructions of the final purchaser. [1967 ex.s. c 22 § 14.]

**15.54.298 "Registrant".** "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter. [1967 ex.s. c 22 § 15.]

**15.54.300 "Official sample".** "Official sample" means any sample of commercial fertilizer taken by the department and designated as "official" by the department. [1967 ex.s. c 22 § 16.]

**15.54.302 "Distribute".** "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, or otherwise supply commercial fertilizer in this state. [1967 ex.s. c 22 § 17.]

**15.54.304 "Distributor".** "Distributor" means any person who distributes. [1967 ex.s. c 22 § 18.]

**15.54.310 Administration of chapter—Rules.** The department shall administer, enforce, and carry out the provisions of this chapter and may adopt rules necessary to carry out its purpose. The adoption of rules shall be subject to a public hearing and all other applicable provisions of chapter 34.04 RCW (Administrative Procedure Act), as enacted or hereafter amended. [1967 ex.s. c 22 § 19.]

**15.54.320 Brand and grade registration—Application, forms, fee—Expiration—Penalty for nonrenewal.** (1) Each brand and grade of commercial fertilizer shall be registered before being distributed in this state. Companies planning to mix customer-formula fertilizers shall include the statement "Customer-Formula Grade Mixes" under the column headed GRADES on the brand registration application form. The application for registration shall be submitted to

the department on forms furnished by the department, and shall be accompanied by a fee of twenty-five dollars per brand. Upon approval by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 3 of each year. The application shall include the following information:

- (a) The brand name;
- (b) Declaration of guaranteed analyses of formulations to be sold;
- (c) The name and address of the registrant and the manufacturer; and
- (d) The sources from which the guaranteed plant nutrients are derived.

A label or labels which shall comply with RCW 15.54.340 shall accompany said application.

(2) A distributor shall not be required to register any brand of commercial fertilizer which is already registered under this chapter by another person.

(3) A distributor shall not be required to register each grade of a customer-formula fertilizer: *Provided*, That such grade shall be distributed under a registered brand.

(4) If an application for renewal of the brand registration provided for in this section is not filed prior to January of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal brand registration shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not distributed this brand subsequent to the expiration of his prior registration. [1967 ex.s. c 22 § 20.]

**15.54.330 Brand and grade registration—Certificate of registration.** The department shall examine the registration application form and labels for conformance with the requirements of this chapter. If the application and appropriate labels are in proper form and contain the required information, the particular brand and grade of commercial fertilizer shall be registered by the department and a certificate of registration shall be issued to the applicant. The department may refuse registration, or cancel the registration, of any brand or grade of commercial fertilizer, the distribution of which would be in violation of any provisions of this chapter. [1967 ex.s. c 22 § 21.]

**15.54.340 Labeling requirements.** (1) Any commercial fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

- (a) The net weight;
- (b) The brand and grade;
- (c) The guaranteed analysis; and
- (d) The name and address of the registrant, or manufacturer, or both.

(2) If distributed in bulk, a written or printed statement of the information required by subsection (1) above shall accompany delivery and be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant for a period of six months and shall be available to the department upon request: *Provided*, That each such delivery shall be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant, or manufacturer, or both; and the name and address of the purchaser. [1967 ex.s. c 22 § 22.]

**15.54.350 Inspection fees.** (1) Each distributor of a commercial fertilizer in this state shall pay to the department an inspection fee of five cents per ton of lime and ten cents per ton of all other commercial fertilizer sold by such person during the year beginning January and ending December 3.

(2) In computing the tonnage on which the inspection fee must be paid, sales of commercial fertilizers to fertilizer manufacturers, sales of commercial fertilizers in packages weighing five pounds net or less, and sales of commercial fertilizers for shipment to points outside this state may be excluded.

(3) When more than one distributor is involved in the distribution of a commercial fertilizer, the last registrant who distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the reporting and paying of fees have been made by a prior distributor of the fertilizer. [1967 ex.s. c 22 § 23.]

**15.54.360 Inspection fees—Reports—Late-collection fee—Confidentiality, exception.** (1) Each person made responsible by this chapter for the payment of inspection fees for commercial fertilizers sold in this state shall file a report with the department on October, January, April, and July of each year showing the number of tons of such commercial fertilizers sold during the three calendar months immediately preceding the date the report is due. The department may accept sales records or other records accurately reflecting the tonnage sold in verifying such reports. The proper inspection fee shall be remitted with the report. The person required to file the report and pay the fee shall have a thirty-day period of grace immediately following the day the report and payment are due to file the report, and pay the fee.

(2) Inspection fees which are due and owing and have not been remitted to the department within thirty days following the due date shall have a late-collection fee of ten percent, but not less than five dollars, added to the amount due when payment is finally made. The assessment of this late-collection fee shall not prevent the department from taking any other action as provided for in this chapter.

(3) The report required by subsection (1) hereof shall not be a public record, and it shall be a misdemeanor for any person to divulge any information given in such report which would reveal the business operation of the person making the report: *Provided*, That nothing contained in this subsection shall be construed to prevent or make unlawful the use of information concerning the business operation of a person in any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department. [1967 ex.s. c 22 § 24.]

**15.54.370 Official samples—Right of entry.** (1) It shall be the duty of the department to inspect, sample, make analysis of, and test commercial fertilizers distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such fertilizers are in compliance with the provisions of this chapter. The department is authorized to stop any commercial vehicle transporting fertilizers on the public highways and direct it to the nearest scales approved by the department to check weights of fertilizers being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to commercial fertilizers and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a fertilizer is deficient in any component or total nutrients, shall be guided solely by the official sample as defined in RCW 15.54.300 and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the results of analysis shall be forwarded by the department to the distributor and to the purchaser, if known. Upon request and within thirty days, the department shall furnish to the distributor a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [1967 ex.s. c 22 § 25.]

**15.54.380 Penalties for deficiencies upon analysis of commercial fertilizers—Appeal—Disposition of penalties.** (1) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one plant nutrient or in total nutrients, penalty shall be assessed in favor of the department in accordance with the following provisions:

(a) A penalty of three times the value of the deficiency, if such deficiency in any one plant nutrient is more than two percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed up to and including ten percent; a penalty of three times the value of the deficiency, if such deficiency in any one plant nutrient is more than three percent under

guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed from ten and one-tenth percent to twenty percent; a penalty of three times the value of the deficiency, if such deficiency in any one plant nutrient is more than four percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed twenty and one-tenth percent and above.

(b) A penalty of three times the value of the total nutrient deficiency shall be assessed when such deficiency is more than two percent under the calculated total nutrient guarantee.

(c) When a commercial fertilizer is subject to penalty under both (a) and (b) above, only the larger penalty shall be assessed.

(2) All penalties assessed under this section on any one commercial fertilizer, represented by the sample analyzed, shall be paid to the department within three months after the date of notice from the department to the registrant. The department shall deposit the amount of the penalty into the fertilizer, agricultural mineral and lime account.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) above.

(4) The civil penalties payable in subsections (1) and (2) above shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying said civil penalties. [1967 ex.s. c 22 § 26.]

**15.54.390 Penalties for deficiencies upon analysis of commercial fertilizers—Determination of commercial values.** For the purpose of initially determining the commercial values to be applied under the provisions of RCW 15.54.380, the department shall determine from the registrant's sales invoice the values per pound charged for nitrogen, available phosphoric acid, soluble potash, and other plant nutrients. The values so determined shall be used in determining and assessing penalties. [1967 ex.s. c 22 § 27.]

**15.54.400 Restrictions on sale—Minimum percentages.** No superphosphate containing less than eighteen percent of available phosphoric acid, nor any mixed fertilizer in which the sum of the percentage guarantees for the nitrogen, available phosphoric acid, and soluble potash in the mixture is less than twenty percent, shall be sold or offered for sale in this state except for specialty fertilizers and customer-formula mixes: *Provided*, That specialty fertilizers, except manipulated animal and vegetable manures, guaranteeing less than five percent total plant food shall contain on the label specific directions for use, and prior to registration, the department may require proof of the efficacy of the product when used as directed. [1967 ex.s. c 22 § 28.]

**15.54.410 Misbranding.** Any commercial fertilizer is misbranded for the purposes of this chapter if it carries a false or misleading statement on the container, or the label attached to the container, or if false or misleading

statements concerning the fertilizer are disseminated in any manner or by any means. [1967 ex.s. c 22 § 29.]

**15.54.420 Unlawful acts.** It shall be unlawful for any person to:

(1) Distribute a misbranded commercial fertilizer;

(2) Fail, refuse, or neglect to place upon or attach to each container of distributed commercial fertilizer a label containing all of the information required by this chapter;

(3) Fail, refuse, or neglect to deliver to a purchaser of bulk commercial fertilizer a statement containing the information required by this chapter;

(4) Distribute a brand of commercial fertilizer which has not been registered with the department; or

(5) Distribute commercial fertilizers containing viable seeds unless serving a desirable purpose and appropriately labeled. [1967 ex.s. c 22 § 30.]

**15.54.430 Publication of distribution information, analyses results.** The department shall publish at least annually and in such form as it may deem proper (1) information concerning the distribution of commercial fertilizers and (2) results of analyses based on official samples as compared with the analyses guaranteed. [1967 ex.s. c 22 § 31.]

**15.54.440 "Stop sale, use, or removal" order, when issued—Release.** The department may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer to hold said commercial fertilizer at a designated place when the department finds such fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter, until this chapter has been complied with and said commercial fertilizer is released by order in writing of the department. The department shall release the commercial fertilizer so withdrawn when the owner or custodian has complied with the provisions of this chapter. [1967 ex.s. c 22 § 32.]

**15.54.450 Noncompliance—Seizure—Disposition.** Any lot of commercial fertilizer not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this chapter and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: *Provided*, That in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or re-label said commercial fertilizer to bring it into compliance with this chapter. [1967 ex.s. c 22 § 33.]

**15.54.460 Damages from administrative action, stop sales or seizures.** No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under RCW 15.54.440 and 15.54.450 if the court finds that there was probable cause for such action. [1967 ex.s. c 22 § 34.]

**15.54.470 Penalty—Violation warnings—Duty of prosecuting attorney—Injunctions.** (1) Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a brand or grade or to stop the sale of fertilizers for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the distributor to present his view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1967 ex.s. c 22 § 35.]

**15.54.480 Fertilizer, agricultural mineral and lime account—Disposition of fees.** All fees collected under the provisions of this chapter shall be paid to the state treasurer to be deposited in the fertilizer, agricultural mineral and lime account in the state general fund as provided for in RCW 43.79.330, which fund shall be used only in the enforcement of this chapter. All moneys collected under the provisions of RCW 15.54.010 through 15.54.250 and 15.54.900 and remaining in such fertilizer, agricultural mineral and lime account on July 1, 1967, shall likewise be used only in the enforcement of this chapter. [1967 ex.s. c 22 § 36.]

**15.54.490 Cooperation with other entities.** The director may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1967 ex.s. c 22 § 37.]

**15.54.910 Prior liability preserved.** The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal,

which shall already be in existence on the effective date of this chapter. [1967 ex.s. c 22 § 38.]

**15.54.920 Continuation of prior licenses and registrations.** All registrations and licenses in effect under sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and RCW 15.54.010 through 15.54.250 and 15.54.900 on the effective date of this chapter shall continue in full force and effect until December 3, 1967. Any registration that has been paid on the effective date of this chapter under the requirements of any prior act shall not be refunded. [1967 ex.s. c 22 § 39.]

**15.54.930 Effective date—1967 ex.s. c 22.** The effective date of this act is July 1, 1967. [1967 ex.s. c 22 § 40.]

**15.54.940 Continuation of rules adopted pursuant to repealed sections.** The repeal of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and the enactment of this act shall not be deemed to have repealed any rules adopted under the provisions of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act. [1967 ex.s. c 22 § 41.]

**Repeal of prior law by 1967 act.** "Sections 15.54.010 through 15.54.250 and section 15.54.900, chapter 11, Laws of 1961 and RCW 15.54.010 through 15.54.250 and 15.54.900 are each repealed." [1967 ex.s. c 22 § 43.]

**15.54.950 Short title.** RCW 15.54.270 through 15.54.490 and 15.54.910 through 15.54.940 shall be known as the "Washington Commercial Fertilizer Act". [1967 ex.s. c 22 § 42.]

**15.54.960 Severability—1967 ex.s. c 22.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1967 ex.s. c 22 § 44.]

## Chapter 15.58

### WASHINGTON PESTICIDE CONTROL ACT

#### Sections

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**15.58.010 Short title.** This chapter may be known and cited as the Washington Pesticide Control Act. [1971 ex.s. c 190 § 1.]

**15.58.020 Declaration of public interest.** The formulation, distribution, storage, transportation, and disposal of any pesticide and the dissemination of accurate scientific information as to the proper use, or nonuse, of any pesticide, is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the immediate and future health and welfare of the people of the state. [1971 ex.s. c 190 § 2.]

**15.58.030 Definitions.** As used in this chapter the following words and phrases shall have the following meaning unless the context clearly requires otherwise:

(1) "Pesticide" means, but is not limited to: (a) any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed and any other form of plant or animal life or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the director may declare to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; (c) any substance or mixture of substances intended to be used as a spray adjuvant; and (d) any other substances intended for such use as may be named by the director by regulation.

(2) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests including devices used in conjunction with pesticides such as lindane vaporizers.

(3) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropod, or mollusk pest.

(4) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(5) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director may declare by regulation to be a pest.

(6) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed, including algae and other aquatic weeds.

(7) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(8) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(9) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(10) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(11) "Spray adjuvant" means any 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 to the effect thereof, and which is in a package or container separate from that of the pesticide with which it is to be used.

(12) "Pest" means, but is not limited to, any insect, other arthropod, fungus, rodent, nematode, mollusk, weed and any form of plant or animal life or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the director may declare by regulation to be a pest.



(13) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(14) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(15) "Insects" means any of the numerous small invertebrate animals whose bodies, in the adult stage, are more or less obviously segmented with six legs and usually with two pairs of wings, belonging to the class insecta; for example, aphids, beetles, bugs, bees, and flies.

(16) "Fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(17) "Weed" means any plant which grows where not wanted.

(18) "Mollusk" means any invertebrate animal characterized by a soft unsegmented body usually partially or wholly enclosed in a calcareous shell, having a foot and mantle; for example, slugs and snails.

(19) "Restricted use pesticide" means any pesticide or device which the director has found and determined subsequent to hearing under the provisions of chapter 17.21 RCW Washington pesticide application act or this chapter as enacted or hereafter amended, to be so injurious to persons, pollinating insects, bees, animals, crops, wildlife, or lands other than the pests it is intended to prevent, destroy, control, or mitigate that additional restrictions are required.

(20) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(21) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) "Highly toxic" pesticides and/or

(b) "Restricted use pesticides" which by regulation are restricted to distribution by licensed pesticide dealers only and/or

(c) Any other pesticide except those pesticides in consumer-sized packages no larger than one gallon liquid measure or five pounds dry weight and which are labeled and intended for home and garden use only; and except fertilizer-pesticide mixes when distributed in packages of fifty pounds or less for home and garden use only.

(22) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(23) "Pest control consultant" means any individual who offers or supplies technical advice, supervision or aid or makes recommendations to the user of:

(a) "Highly toxic pesticides" and/or

(b) "Restricted use pesticides" which are restricted by regulation to distribution by licensed pesticide dealers only and/or

(c) Any other pesticides except those pesticides in consumer-sized packages no larger than one gallon liquid measure or five pounds dry weight and which are labeled and intended for home and garden use only and except fertilizer-pesticide mixes when distributed in packages of fifty pounds or less for home and garden use only.

(24) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic: *Provided*, That in the case of a spray adjuvant the ingredient statement need contain only the names of the principal functioning agents and the total percentage of the constituents ineffective as spray adjuvants. If more than three functioning agents are present, only the three principal ones need be named.

(25) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(26) "Inert ingredient" means an ingredient which is not an active ingredient.

(27) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(29) "Department" means the department of agriculture of the state of Washington.

(30) "Director" means the director of the department or his duly authorized representative.

(31) "Registrant" means the person registering any pesticide pursuant to the provisions of this chapter.

(32) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or the immediate container thereof, and the outside container or wrapper of the retail package.

(33) "Labeling" means all labels and other written, printed or graphic matter:

(a) Upon the pesticide or device or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States department of agriculture; interior, health, education and welfare; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(34) "Highly toxic" means any highly toxic pesticide as determined by the director under RCW 15.58.040.

(35) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act as enacted or hereafter amended.

(36) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(37) "Regulation" means rule or regulation. [1971 ex.s. c 190 § 3.]

**15.58.040 Director to administer and enforce chapter, adopt regulations—Scope of regulations.** (1) The director shall administer and enforce the provisions of this chapter and regulations adopted hereunder. All the authority and requirements provided for in chapter 34.04 RCW (Administrative Procedure Act) and \*chapter 42.32 RCW shall apply to this chapter in the adoption of regulations including those requiring due notice and a hearing for the adoption of permanent regulations.

(2) The director is authorized to adopt appropriate regulations for carrying out the purpose and provisions of this chapter, including but not limited to regulations providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, men, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to man. The director shall, in making this determination, be guided by the federal definition of highly toxic, as defined in Title 7, code of federal regulations 362.8 as issued or hereafter amended. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require regulations restricting or prohibiting their distribution or use. The director may include in the regulation the time and conditions of distribution or use of such restricted

use pesticides and may, if he deems it necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under his direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations: *Provided*, That the director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter; and

(j) Regulating the labeling of devices.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, established by the United States department of agriculture or any other federal agency. [1971 ex.s. c 190 § 4.]

**\*Reviser's note:** RCW 43.32.010 and 43.32.020 were repealed by 1971 ex.s. c 250 § 15. Later enactment, see chapter 43.30 RCW.

**15.58.050 Registration of pesticides—Renewal—Exceptions.** Every pesticide which is distributed within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the director subject to the provisions of this chapter. Such registration shall be renewed annually prior to January 1: *Provided*, That registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this chapter; if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For Experimental Use Only—Not To Be Sold", together with the manufacturer's name and address; or if a written permit has been obtained from the director to sell the specific pesticide for experimental purposes subject to restrictions and conditions set forth in the permit. [1971 ex.s. c 190 § 5.]

**15.58.060 Statement for registration—Contents.** (1) The applicant for registration shall file a statement with the department which shall include:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(b) The name of the pesticide;

(c) Other necessary information required for completion of the department's application for registration form;

(d) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions and precautions for use.

(2) The director, when he deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide including the active and inert ingredients.

(3) The director may require a full description of the tests made and the results thereof upon which the claims are based.

(4) The director may prescribe other necessary information by regulation. [1971 ex.s. c 190 § 6.]

**15.58.070 Annual registration fee—Expiration when renewal application made.** (1) Any person desiring to register a pesticide with the department shall pay to the director an annual registration fee of ten dollars for each pesticide registered by the department for such person. All such registrations shall expire on December 31 of any one year.

(2) Any registration approved by the director and in effect on the 3 day of December for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until such time as the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of RCW 15.58.110. [1971 ex.s. c 190 § 7.]

**15.58.080 Additional fee for late registration renewal—Exception.** If the renewal of a pesticide registration is not filed prior to January 1 of any one year an additional fee of five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued: *Provided*, That such additional fee shall not apply if the applicant furnishes an affidavit certifying that he did not distribute such unregistered pesticide during the period of nonregistration. The payment of such additional fee is not a bar to any prosecution for doing business without proper registry. [1971 ex.s. c 190 § 8.]

**15.58.090 Certain agencies may register without fee—Not subject to RCW 15.58.180.** All federal, state, and county agencies shall register without fee all pesticides sold by them and they shall not be subject to the license provisions of RCW 15.58.180. [1971 ex.s. c 190 § 9.]

**15.58.100 Criterion for registering.** If it appears to the director that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of this chapter he shall register the pesticide. [1971 ex.s. c 190 § 10.]

**15.58.110 Refusing or canceling registration—Procedure—Hearings.** (1) If it does not appear to the director that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this chapter or regulations adopted thereunder he shall notify the registrant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the corrections the director shall refuse to register

the pesticide. The applicant may request a hearing as provided for in chapter 34.04 RCW.

(2) The director may, when he determines that a pesticide or its labeling does not comply with the provisions of this chapter or the regulations adopted thereunder, cancel the registration of a pesticide after a hearing in accordance with the provisions of chapter 34.04 RCW. [1971 ex.s. c 190 § 11.]

**15.58.120 Suspension of registration when hazard to public health—Procedure.** The director may, when he determines that there is or may be an imminent hazard to the public health and welfare, suspend on his own motion, the registration of a pesticide in conformance with the provisions of chapter 34.04 RCW. [1971 ex.s. c 190 § 12.]

**15.58.130 "Misbranded" as applicable to pesticides, devices or spray adjuvants.** The term "misbranded" shall apply:

(1) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) To any pesticide:

(a) If it is an imitation of or is offered for sale under the name of another pesticide;

(b) If its labeling bears any reference to registration under the provision of this chapter unless such reference be required by regulations under this chapter;

(c) If any word, statement, or other information, required by this chapter or regulations adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) If the label does not bear:

(i) The name and address of the manufacturer, registrant or person for whom manufactured;

(ii) Name, brand or trademark under which the pesticide is sold;

(iii) An ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the director may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(iv) Directions for use and a warning or caution statement which are necessary and which if complied with would be adequate to protect the public and to prevent injury to the public, including living man, useful vertebrate animals, useful vegetation, useful invertebrate animals, wildlife, and land; and

(v) The weight or measure of the content, subject to the provisions of chapter 19.94 RCW (state weights and measures act) as enacted or hereafter amended.

(e) If that pesticide contains any substance or substances in quantities highly toxic to man, determined as provided by RCW 15.58.040, unless the label bears, in addition to any other matter required by this chapter:

(i) The skull and crossbones;

(ii) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(iii) A statement of an antidote for the pesticide.

(f) If the pesticide container does not bear a label or if the label does not contain all the information required by this chapter or the regulations adopted under this chapter.

(3) To a spray adjuvant when the label fails to state the type or function of the principal functioning agents. [1971 ex.s. c 190 § 13.]

**15.58.140 "Adulterated" as applicable to pesticides.**

The term "adulterated" shall apply to any pesticide if its strength or purity deviates from the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted, or if any contaminant is present in an amount which is determined by the director to be a hazard. [1971 ex.s. c 190 § 14.]

**15.58.150 Unlawful acts as to pesticides.** (1) It is unlawful for any person to distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of this chapter;

(b) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: *Provided*, That at the discretion of the director, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(c) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this chapter and the regulations adopted under this chapter;

(d) Any pesticide including arsenicals, fluorides, fluosilicates, and/or any other white powdered pesticides unless they have been distinctly denatured as to color, taste, odor, or form if so required by regulation;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating regulations adopted pursuant to RCW 15.58.040 (2) (f) or pesticides found in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) To sell or deliver any restricted use pesticide to any person who is required by law or regulations promulgated under such law to have a permit to use or purchase such restricted use pesticides unless such person or his agent, to whom sale or delivery is made, has a valid permit to use or purchase the kind and quantity of such restricted use pesticide sold or delivered: *Provided*, That, subject to conditions established by the director, such permit may be obtained immediately prior to sale or delivery from any person designated by the director;

(b) For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this chapter or regulations adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter or the regulations adopted thereunder;

(c) For any person to use or cause to be used any restricted use pesticide contrary to label directions or to regulations of the director if those regulations differ from or further restrict the label directions;

(d) For any person to use for his own advantage or to reveal, other than to the director or proper officials or employees of the state, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of RCW 15.58.060. [1971 ex.s. c 190 § 15.]

**15.58.160 "Stop sale, use or removal" order—Service.** When the director has reasonable cause to believe a pesticide or device is being distributed, stored, or transported in violation of any of the provisions of this chapter, or of any of the prescribed regulations under this chapter, he may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the director may attach the order to the pesticide or device. The pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the director, or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction. [1971 ex.s. c 190 § 16.]

**15.58.170 "Stop sale, use or removal" order—Adjudication of alleged violation.** (1) After service of a "stop sale, use or removal" order is made upon any person, either that person or the director may file an action in a court of competent jurisdiction in the county in which a violation of this chapter or regulations adopted thereunder is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions mandatory or restraining, and such intermediate orders

as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this chapter or regulations adopted thereunder: *Provided*, That no authority is granted hereunder to affect the sale or use of products on which legally approved pesticides have been legally used.

(2) If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and the proceeds, if such pesticide or device is sold, less cost including legal costs, shall be paid to the state treasury as provided in RCW 15.58.410: *Provided*, That the pesticide or device shall not be sold contrary to the provisions of this chapter or regulations adopted thereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(3) When a decree of condemnation is entered against the pesticide, court costs, fees, and storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide. [1971 ex.s. c 190 § 17.]

**15.58.180 Pesticide dealer license—Fee—Application, contents—Pesticide dealer manager—Exceptions.** (1) It shall be unlawful for any person to act in the capacity of a pesticide dealer, or advertise as, or assume to act as a pesticide dealer at any time without first having obtained an annual license from the director which shall expire on the final day of February. A license shall be required for each location or outlet located within this state from which such pesticides are distributed: *Provided*, That any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet: *Provided further*, That such licensed out-of-state pesticide dealer shall be exempt from the pesticide dealer manager requirements.

(2) Application for a license shall be accompanied by a ten dollar annual license fee and shall be on a form prescribed by the director and shall include the full name of the person applying for such license and the name of the individual within the state designated as the pesticide dealer manager. If such applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director.

(3) It shall be unlawful for any licensed dealer outlet to operate without a pesticide dealer manager who has

a license of qualification. The department shall be notified forthwith of any change in the pesticide dealer manager designee during the licensing period.

(4) Provisions of this section shall not apply to a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through apparatuses used for such pesticide application; or any federal, state, county, or municipal agency which provides pesticides only for its own programs. [1971 ex.s. c 190 § 18.]

**15.58.190 Additional fee for late renewal of pesticide dealer license—Exception.** If an application for renewal of a pesticide dealer license is not filed on or prior to March 1 of any one year an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not apply if the applicant furnishes an affidavit that he has not operated as a pesticide dealer subsequent to the expiration of his prior license. [1971 ex.s. c 190 § 19.]

**15.58.200 Pesticide dealer manager examination and license of qualification—Fee.** The director shall require each pesticide dealer manager to demonstrate to the director his knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination after which the director shall issue a license of qualification. The director shall charge a five dollar examination fee for each examination administered on a regularly scheduled examination date. [1971 ex.s. c 190 § 20.]

**15.58.210 Pest control consultant license—Fee—Exemptions.** No individual shall perform services as a pest control consultant after February 28, 1973, without first obtaining from the director an annual license which shall expire on the final day of February of each year. Application for a license shall be on a form prescribed by the director and shall be accompanied by a fee of ten dollars: *Provided*, That licensed pesticide applicators and operators; employees of federal, state, county, or municipal agencies when acting in their official capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet, shall be exempt from this licensing provision. [1971 ex.s. c 190 § 21.]

**15.58.220 Public pest control consultant license—Nonfee—Exemptions.** For the purpose of this section public pest control consultant means any individual who is employed by a governmental agency or unit to act as a pest control consultant as defined in RCW 15.58.030(23). No person shall act as a public pest control consultant on or after February 28, 1973 without first obtaining an annual nonfee license from the director which shall expire on the final day of February of each

year. Application for a license shall be on a form prescribed by the director: *Provided*, That federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or his duly authorized representative, and public operators licensed under RCW 17.21.220 shall be exempt from this licensing provision. [1971 ex.s. c 190 § 22.]

**15.58.230 Examination and license for consultants—Fee.** The director shall require each applicant for a pest control consultant's license or a public pest control consultant's license to demonstrate to the director the applicant's knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination for the classifications for which he has applied prior to issuing his license. An examination fee of five dollars shall be charged when an examination is requested at other than a regularly scheduled examination date. [1971 ex.s. c 190 § 23.]

**15.58.240 Classified licenses—Limitations—Examinations—Fee—Renewal.** The director may classify licenses to be issued under the provisions of this chapter. Such classifications may include but not be limited to agricultural crops, ornamentals, or noncrop land herbicides. If the licensee has a classified license he shall be limited to practicing within these classifications. Each such classification shall be subject to separate testing procedures and requirements: *Provided*, That no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section. The director may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination when deemed necessary because new knowledge or new classifications are required to carry out the responsibilities of the licensee. [1971 ex.s. c 190 § 24.]

**15.58.250 Records to be kept—Contents—Access.** Any person issued a license or permit under the provisions of this chapter may be required by the director to keep accurate records on a form prescribed by him which may contain the following information:

- (1) The delivery, movement or holding of any pesticide or device, including the quantity;
- (2) The date of shipment and receipt;
- (3) The name of consignor and consignee; and
- (4) Any other information, necessary for the enforcement of this chapter, as prescribed by the director.

The director shall have access to such records at any reasonable time to copy or make copies of such records for the purpose of carrying out the provisions of this chapter. [1971 ex.s. c 190 § 25.]

**15.58.260 Grounds for denial, suspension or revocation of license, registration or permit.** The director is authorized to deny, suspend, or revoke any license,

registration or permit provided for in this chapter subject to a hearing and in conformance with the provisions of chapter 34.04 RCW (Administrative Procedure Act) in any case in which he finds there has been a failure or refusal to comply with the provisions of this chapter or regulations adopted hereunder. [1971 ex.s. c 190 § 26.]

**15.58.270 Subpoenas—Witness fees.** The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents and records in the county in which the person licensed under this chapter resides in any hearing affecting the authority or privilege granted by a license, registration or permit issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1971 ex.s. c 190 § 27.]

**15.58.280 Examination of pesticides or devices—Access—Procedure when criminal proceedings contemplated.** The sampling and examination of pesticides or devices shall be made under the direction of the director for the purpose of determining whether or not they comply with the requirements of this chapter. The director is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to pesticides or devices. If it appears from such examination that a pesticide or device fails to comply with the provisions of this chapter or regulations adopted thereunder, and the director contemplates instituting criminal proceedings against any person, the director shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter in the opinion of the director it appears that the provisions of this chapter or regulations adopted thereunder have been violated by such person, the director shall refer a copy of the results of the analysis or the examination of such pesticide or device to the prosecuting attorney for the county in which the violation occurred. [1971 ex.s. c 190 § 28.]

**15.58.290 Warning notice, when.** Nothing in this chapter shall be construed as requiring the director to report for prosecution or for the institution of condemnation proceedings minor violations of this chapter when he believes that the public interest will be best served by a suitable notice of warning in writing. [1971 ex.s. c 190 § 29.]

**15.58.300 Persons exempted from certain penalties under RCW 15.58.150.** The penalties provided for violations of RCW 15.58.150(1)(a), (b), (c), (d), and (e) shall not apply to:

- (1) Any carrier while lawfully engaged in transporting a pesticide within the state, if such carrier, upon request, permits the director to copy all records showing the transaction in and movement of the articles.

(2) Public officials of the state and the federal government engaged in the performance of their official duties.

(3) The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides. [1971 ex.s. c 190 § 30.]

**15.58.310 Pesticides for foreign export not in violation of chapter.** No pesticides shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply. [1971 ex.s. c 190 § 31.]

**15.58.320 Certain pharmacists exempted from licensing provisions.** The license provisions of this chapter shall not apply to any pharmacist who is licensed pursuant to chapter 18.64 RCW and does not distribute any pesticide required to be registered under the provisions of this chapter. [1971 ex.s. c 190 § 32.]

**15.58.330 General penalty—Misdemeanor.** Any person violating any provisions of this chapter or regulations adopted thereunder is guilty of a misdemeanor. [1971 ex.s. c 190 § 33.]

**15.58.340 Injunction against violation.** The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any regulation made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1971 ex.s. c 190 § 34.]

**15.58.350 Persons charged with enforcement barred from interest in pesticides, devices.** No person charged with the enforcement of any provision of this chapter shall be directly or indirectly interested in the sale, manufacture or distribution of any pesticide or device. [1971 ex.s. c 190 § 35.]

**15.58.360 No recovery of damages when probable cause.** No state court shall allow the recovery of damages from administrative action taken or for "stop sale, use or removal" if the court finds that there was probable cause for such action. [1971 ex.s. c 190 § 36.]

**15.58.370 Results of analyses to be published.** The department shall publish at least annually and in such form as it may deem proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides: *Provided*, That individual distribution information shall not be a public record. [1971 ex.s. c 190 § 37.]

**15.58.380 Board to advise director.** The pesticide advisory board shall advise the director on any or all problems relating to the formulation, distribution, storage, transportation, disposal, and use of pesticides in the state. [1971 ex.s. c 190 § 38.]

**15.58.390 Pesticide control board—Created—Members—Purpose—Classification of persistent pesticides and determination of essential uses.** (1) There is hereby created a pesticide control board consisting of the dean of the college of agriculture at Washington State University; the secretary of the department of social and health services or his designee; the director of the department of ecology; and the director of the department of agriculture. This board is created to assure the continuation of this state's basic policy of protecting and improving its environmental quality which is a matter of the utmost public concern.

(2) The pesticide control board shall, at least once each year prior to November 1, make a determination of what persistent pesticides shall be limited to essential uses, list what the essential uses shall be for pesticides so classified, and establish a time schedule for compliance. This annual determination shall include a review of existing essential uses for such pesticides. In determining what pesticides are classified as persistent (pesticides which, following application, degrade or dissipate slowly in the environment), the board shall take into consideration but shall not be limited by determinations made by federal agencies, including the federal environment protection agency. The classification of persistent pesticides shall include but not necessarily be limited to DDT, aldrin, dieldrin, endrin, heptachlor, chlordane, benzene hexachloride, lindane, toxaphene and compounds containing arsenic, lead, or mercury. The findings of the board in regard to persistent pesticides and essential uses shall be implemented by department regulations.

(3) In making its determination of essential uses of any pesticide, the pesticide control board shall consider the need for control of the target pest, whether effective alternate materials are available, whether the use of such alternate materials is practical, and whether the use of such alternate materials is less hazardous to the environment and/or public health and welfare.

(4) The determinations made by the pesticide control board under the provisions of this chapter shall be applicable and controlling to the administration and enforcement of chapter 17.21 RCW. [1971 ex.s. c 190 § 39.]

**15.58.400 Cooperation and agreements with other agencies.** The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation. [1971 ex.s. c 190 § 40.]



**15.58.410 Moneys to be paid into state treasury.** All moneys received by the director under the provisions of this chapter shall be paid into the state treasury. [1971 ex.s. c 190 § 41.]

**15.58.900 Effective date—1971 ex.s. c 190.** The effective date of this act is July 1, 1971: *Provided*, That the effective date of sections 21, 22 and 23 is March 1, 1973. [1971 ex.s. c 190 § 42.]

**15.58.910 Continuation of rules adopted pursuant to repealed sections.** The repeal of RCW 15.57.010 through 15.57.930 and the enactment of this chapter shall not be deemed to have repealed any regulations adopted under the provisions of RCW 15.57.010 through 15.57.930 in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. All such regulations shall be considered to have been adopted under the provisions of this chapter. [1971 ex.s. c 190 § 43.]

**15.58.920 Existing liabilities not affected.** The enactment of this chapter shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this chapter becomes effective. [1971 ex.s. c 190 § 44.]

**15.58.930 Continuation of registrations, licenses and permits.** Any registration, license, or permit issued under the provisions of chapter 15.57 RCW and in effect on the effective date of this chapter shall continue in full force and effect until its expiration date, as if it had been issued under the provisions of this chapter, unless revoked prior thereto for cause by the director. [1971 ex.s. c 190 § 45.]

**15.58.940 Severability—1971 ex.s. c 190.** If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 190 § 46.]

### Chapter 15.60 APIARIES

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*Honey, standards and marketing: Chapter 69.28 RCW.*

#### 15.60.005 Definitions. As used in this chapter:

- (1) "Director" means the director of agriculture of the state of Washington;
- (2) "Department" means the department of agriculture of the state of Washington;
- (3) "Apiary" includes bees, hives and appliances, wherever they are kept, located or found;
- (4) "Apiarist" means any person who owns bees or is a keeper of bees;
- (5) "Appliances" means any implement or device used in the manipulating of bees or their brood or hives, which may be used in any apiary;
- (6) "Bees" means honey producing insects of the species *apis mellifica* and include the adults, eggs, larvae, pupal, or other immature stages thereof, together with such materials as are deposited into hives by their adults, except honey and beeswax in rendered form;
- (7) "Colony" or "colonies of bees" refers to any hive occupied by bees;
- (8) "Disease" means American or European foul brood, or any other disease or any condition affecting bees in their brood which may cause an epidemic;
- (9) "Hive" means any receptacle or container made or prepared for the use of bees, or box or similar container taken possession of by bees;
- (10) "Location" means any premises upon which an apiary is located;
- (11) "Person" includes any individual, firm, partnership, association or corporation, but does not include any common carrier when engaged in the business of transporting bees, hives, appliances, bee cages or other commodities subject to the provisions of this chapter, in the regular course of business;
- (12) "Combles packaged bees" means bees packed for shipment into this state in packages which contain no honey, honey comb, brood comb, or appliances previously used on bees. [1961 c 11 § 15.60.005. Prior: 1955 c 271 § 1.]

**15.60.010 Division of apiculture created—Compensation, expenses of director.** There is hereby created a division of apiculture in the department of agriculture, which shall consist of the director of agriculture and of such apiary inspectors as he may appoint. The director shall receive no additional salary for performance of his duties under this chapter but shall be paid his actual traveling expenses incurred in performing such duties. [1961 c 11 § 15.60.010. Prior: 1933 ex.s. c 59 § 1; RRS § 3170-1; prior: 1919 c 116 § 1.]

**15.60.015 Inspection—Disease control—Rules, regulations, orders.** The director shall have the power on his own motion or by petition of industry to promulgate and enforce such reasonable rules, regulations and orders as he may deem necessary or proper to prevent the

introduction or spreading of diseases affecting bees or appliances in this state, and to promulgate and enforce such reasonable rules, regulations and orders as he may deem necessary or proper governing the inspection of all bees and appliances within or about to be imported into this state. [1961 c 11 § 15.60.015. Prior: 1955 c 271 § 2.]

**15.60.020 Reciprocal agreements—Inspectors, appointment, duties, compensation.** The director shall have authority to enter into reciprocal agreements with any and all states for the prevention or spread of diseases affecting bees or appliances. The director shall appoint one or more apiary inspectors as conditions may warrant, who shall, under his direction, have charge of the inspection of apiaries, and bees, the investigation of outbreaks of bee diseases, investigation of bee poisoning by agricultural insecticides and other chemicals, the enforcement of the provisions of this chapter in relation to the eradication and control of bee diseases, or any other such duties as the director may prescribe. Such apiary inspector, or inspectors, shall be paid such reasonable compensation as may be fixed by the director while so employed and his actual and necessary traveling expenses incurred in the performance of his duties. [1961 c 11 § 15.60.020. Prior: 1955 c 271 § 4; prior: 1949 c 105 § 1, part; 1945 c 113 § 1, part; 1933 ex.s. c 59 § 2, part; 1919 c 116 § 3, part; Rem. Supp. 1949 § 3170-2, part.]

**15.60.030 Registration of apiaries—Identification number—Posting.** Each person owning or having bees in his possession shall register without charge with the extension agent of the county wherein the bees are located, the location of the bee yard, name, address, and phone number of the owner, and post at the bee yard a number as provided for herein, on or before April 1st each year.

Any person owning or operating over twenty-five colonies of bees in the state of Washington shall apply to the division of apiculture of the department for a permanent identification number, not transferable, which shall be posted conspicuously at the entrance of each apiary at all times, not more than one hundred fifty feet from the bees. Bees placed in orchards for pollination shall be exempt from posting during placement. [1965 c 44 § 1; 1961 c 11 § 15.60.030. Prior: 1955 c 271 § 5; prior: 1949 c 105 § 1, part; 1945 c 113 § 1, part; 1933 ex.s. c 59 § 2, part; 1919 c 116 § 3, part; Rem. Supp. 1949 § 3170-2, part.]

**15.60.040 Inspection—Eradication of disease—Quarantine—Permit for removal.** (1) The director shall make or cause to be made whenever he deems it necessary, inspections of all apiaries.

(2) Whenever a disease exists in any apiary, the inspector making the inspection shall plainly mark the hives containing diseased bees. The inspector shall, in writing, notify the owner or person in charge or in possession of such apiary, stating in the notice the nature of the disease found in each colony, identifying such colony by reference to the mark placed upon the hive

thereof, and ordering eradication of such disease within a specified time. When the owner or person in charge or possession of any apiary is not known, the notice shall be served by posting in a conspicuous place in the apiary, or by mailing a copy thereof to the owner's registered address.

(3) The owner or person in charge or in possession of any diseased bees must eradicate such disease within the time specified in the notice. If the disease is American foul brood, the time specified in the notice shall not be less than twenty-four hours nor more than one hundred and twenty hours from the time of serving the notice. Eradication of American foul brood shall be by burning the diseased colonies, including the bees, combs, brood, frames, honey and wax, and by burying the ashes and disinfecting the hive by means approved by the director.

(4) Any apiary which is found to be infected with American foul brood and to be dangerous to the health of any apiary in this state may be summarily quarantined by the department. Notice of the quarantine shall be posted prominently on the apiary, and the owner notified of such quarantine. The quarantine shall not be removed until the department reasonably determines that no further infection exists. During the quarantine period, no bees, honey, appliances, equipment, or other materials may be removed from the apiary without first procuring a permit from the department. However, such bees, honey, appliances, equipment, or other materials may be removed for the purpose of eradicating the disease. [1961 c 11 § 15.60.040. Prior: 1959 c 174 § 1; 1955 c 271 § 6; prior: (i) 1949 c 105 § 2; 1933 ex.s. c 59 § 3; Rem. Supp. 1949 § 3170-3. (ii) 1933 ex.s. c 59 § 4; RRS § 3170-4.]

**15.60.050 Right of entry to inspect.** Inspectors shall have access to all apiaries and places where bees are kept, and it shall be unlawful to resist, impede, or hinder such officers in the discharge of their duties. [1961 c 11 § 15.60.050. Prior: 1933 ex.s. c 59 § 6; RRS § 3170-6.]

**15.60.060 Disinfection of person, clothing, appliances.** Any person who has inspected an infected apiary or knowingly comes in contact with any diseased bees, shall, before proceeding to another apiary, thoroughly disinfect his person, clothing, tools, and appliances used by him which have come in contact with any infected bees or material. [1961 c 11 § 15.60.060. Prior: 1933 ex.s. c 59 § 7; RRS § 3170-7.]

**15.60.080 Diseased bees—Immovable combs—Public nuisance.** Every apiary in which diseased bees are found, or in which bees are kept in hives wherein the combs or frames are immovable, or which are so constructed as to impede or hinder inspection, is declared a public nuisance, and such apiaries, bees and equipment shall be held by the person in whose possession they may be and shall not be moved from the place where they may be, except upon the written permission or upon the specific direction of the director. The inspector shall affix a warning tag or notice to such

nuisance and give notice of such violation in the manner provided in RCW 15.60.040. If the person so notified refuses or fails within the time specified in such notice to commence and proceed by due diligence to comply therewith, such apiary, bees, appliances and equipment may be seized by the director. The prosecuting attorney of the county in which such nuisance is found, on the complaint of the director, shall maintain in the name of the state a civil action to abate and prevent such nuisance; and upon judgment and order of the court, such nuisance shall be condemned and destroyed in the manner directed by the court, or released upon such conditions as the court in its discretion may impose to insure that the nuisance will be abated. If the owner fails to comply with the order of the court within the time specified therein, the court may order disposal of the apiary, bees, appliances and equipment under such terms and conditions as the court may prescribe.

The cost incurred by the state in abating such nuisance may be assessed against the owner of the apiary and paid into the court for return to the apiary fund of the department as provided in RCW 69.28.160. [1961 c 11 § 15.60.080. Prior: 1955 c 271 § 7; 1933 ex.s. c 59 § 11; RRS § 3170-11.]

**15.60.100 Importation of bees.** It shall be unlawful for any person, or any railroad or transportation company, or other common carrier, to bring into this state for any purpose any bees or appliances without first having secured an official certificate, certified by the state bee inspector of the state of origin that such bees and appliances are not infected with disease and without having obtained a permit so to do from the director: *Provided*, That a permit shall not be necessary if bees are brought into this state as "Combless Packages of Bees". All bees and appliances imported into this state under permit shall be placed in quarantine for at least thirty days after arrival and written notice shall be given the director within three days after such date of arrival, giving the date of arrival, destination and/or location of bees or appliances and a copy of the inspection certificate issued by the state of origin. Each hive or colony shall be marked for identification by placing the name or recognized abbreviation of the state of origin, and the initials of the person importing the bees or appliances in letters at least one inch in height. If evidence of any disease is found such imported bees or appliances shall be subject to the same provisions as local bees or appliances. [1961 c 11 § 15.60.100. Prior: 1955 c 271 § 9; prior: (i) 1941 c 130 § 2; Rem. Supp. 1941 § 3183-2. (ii) 1941 c 130 § 3, part; Rem. Supp. 1941 § 3183-3, part. (iii) 1949 c 105 § 5; 1941 c 130 § 5; 1933 ex.s. c 59 § 7; 1919 c 116 § 11; Rem. Supp. 1949 § 3183-5. (iv) 1949 c 105 § 3; Rem. Supp. 1949 § 3170-10.]

**15.60.110 Certain importation prohibited.** No person shall import into this state any used bee supplies, used honey house equipment, or other used apiary equipment, or bees in hives. [1961 c 11 § 15.60.110. Prior: 1955 c 271 § 10; prior: 1941 c 130 § 3, part; Rem. Supp. 1941 § 3183-3, part.]

**15.60.115 Out of state movement, importation—**  
**Inspection costs.** When an inspection is requested by any person for the purpose of obtaining a certificate of inspection for out of state movement of bees or appliances, the applicant for such certificate shall pay the cost of such inspection, including per diem and traveling expense of the inspector. Any person importing bees or appliances into this state shall pay the cost of such inspection, including per diem and traveling expense of the inspector. [1961 c 11 § 15.60.115. Prior: 1955 c 271 § 11.]

**15.60.120 Queen bee rearing apiaries, inspection—**  
**Certificate.** Every person rearing queen bees for sale shall have each queen rearing apiary inspected whenever necessary and when conditions are favorable for inspection. If the inspection discloses any contagious or infectious disease in any apiary the owner, lessee, or person in charge of such apiary shall not ship any queen bees therefrom until he receives a certificate in writing from the inspector that such apiary is free from all disease. [1961 c 11 § 15.60.120. Prior: 1933 ex.s. c 59 § 8, part; RRS § 3170-8, part.]

**15.60.130 Use of honey for candy manufacture—**  
**Boiling requirement.** No person rearing queen bees for sale shall use honey in making candy for use in mailing cages unless such honey has been boiled for at least thirty minutes. [1961 c 11 § 15.60.130. Prior: 1933 ex.s. c 59 § 8, part; RRS § 3170-8, part.]

**15.60.140 Penalty.** Any person who violates any provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than one hundred dollars. Upon a second and subsequent violation and conviction, the same shall constitute a gross misdemeanor. [1961 c 11 § 15.60.140. Prior: (i) 1949 c 105 § 4; 1933 ex.s. c 59 § 12; Rem. Supp. 1949 § 3170-12. (ii) 1941 c 130 § 6; Rem. Supp. 1941 § 3183-6.]

**15.60.150 Malicious, wilful killing or injuring bees—**  
**Penalty.** No person shall wilfully or maliciously kill honey bees, or, for the purpose of injuring honey bees, place any poisonous or sweetened substance in a place where it is accessible to them within this state.

Any person who violates any provision of this section shall be fined not less than ten nor more than one hundred dollars. [1961 c 11 § 15.60.150. Prior: 1897 c 12 §§ 1, 2; no RRS.]

**15.60.160 Annual report of director.** The director shall annually report to the governor concerning the operation of the division of apiculture, giving the number of apiaries inspected, the number of colonies treated or destroyed and such other information as he deems necessary or of value to the beekeeping industry. [1961 c 11 § 15.60.160. Prior: 1933 ex.s. c 59 § 9; RRS § 3170-9.]

## Chapter 15.61

## LADYBUGS AND OTHER BENEFICIAL INSECTS

## Sections

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| 15.61.010 | Administrative declaration—Regulation of commercial movement. |
| 15.61.020 | Intergovernmental cooperation.                                |
| 15.61.030 | Injunctions.  |
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**15.61.010 Administrative declaration—Regulation of commercial movement.** The director of agriculture in order to protect the production of native and/or domestic plants or their products in this state, may declare ladybugs or any other insects to be beneficial insects and necessary to maintain a beneficial biological balance over insects which are detrimental to such native and/or domestic plants or their products. Such declaration shall be made only after a hearing as prescribed in the administrative procedure act, chapter 34.04 RCW.

Upon declaring ladybugs or other insects to be beneficial insects the director of agriculture may regulate or prohibit the commercial movement of such beneficial insects from this state. [1963 c 232 § 10.]

**15.61.020 Intergovernmental cooperation.** The director of agriculture may cooperate and enter into agreements with governmental agencies, other states, and agencies of the federal government to carry out the purposes and provisions of this chapter or rules adopted hereunder. [1963 c 232 § 11.]

**15.61.030 Injunctions.** The director of agriculture may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to said sections in the county where such violation has occurred, notwithstanding the existence of any other remedies at law. [1963 c 232 § 12.]

**15.61.040 Nonapplicability to honey bees and insects used for research.** The provisions of this chapter shall not apply to honey bees or to those beneficial insects used for research purposes. [1963 c 232 § 13.]

**15.61.050 Violations—Penalty.** Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense. [1963 c 232 § 14.]

**15.61.900 Severability—1963 c 232.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 232 § 15.]

## Chapter 15.63

## WASHINGTON STATE WHEAT COMMISSION

## Sections

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**15.63.010 Declaration of policy and police power.** It is in the public interest of all the people to protect the reputation and welfare of the wheat industry of this state. Without a commission to represent it, the wheat industry cannot effectively help itself in developing foreign and domestic markets, in promoting research to better the quality of Washington wheat, or in protecting the consumer by maintaining proper grades and standards. A wheat commission is vitally necessary to improve the competitive position of Washington wheat producers with respect to states already having such commissions, and to assist these producers in obtaining a fair return from their labor, their farms and the wheat they produce. Such a commission must be endowed with such authority as will enable it to cope swiftly and effectively with our rapidly changing economic conditions as they may affect the wheat industry. Therefore this act of the legislature is passed to establish a wheat commission, composed of wheat producers familiar with the complex problems peculiar to the industry, and designed to carry out the purposes of the act as herein set forth, under the supervision of the director of agriculture. The provisions of this act are enacted in the exercise of the police powers of this state for the broad purpose of protecting the health and economic welfare not only of the wheat industry, but of labor and industry dependent upon wheat, and of the people of the state as a whole. [1961 c 87 § 1.]

**15.63.020 Definitions.** As used in this chapter, the following terms shall have the following meanings:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representatives.

(2) "Person" means any individual, firm, corporation, trust, association, partnership, society or any other organization of individuals.

(3) "Producer" means any person engaged in the business of producing wheat, or having an interest in the production of wheat for market in commercial quantities.

(4) "Commercial quantities" means five hundred or more bushels of wheat produced for market in any calendar year by any producer.

(5) "Wheat" means all kinds and varieties of wheat grown in the state of Washington.

(6) "Wheat commission" and "commission" are synonymous and mean the commission established pursuant to the provisions of this chapter.

(7) "Fiscal year" means the twelve month period beginning July 1 of any year and ending upon the last day of June, both dates inclusive.

(8) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing wheat which he has purchased or acquired from a producer, or which he is shipping for or on behalf of a producer, and shall include any lending agency for a commodity credit corporation loan to producers.

(9) "Commercial channels" means the sale of wheat for use as food, feed, seed or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat, or products produced from wheat. [1961 c 87 § 2.]

**15.63.030 Purposes enumerated.** The purposes of this chapter are:

(1) To enable wheat producers of Washington with the aid of the state to help themselves in developing foreign and domestic markets.

(2) To provide methods and means for the development of new and larger markets for wheat grown within Washington.

(3) To carry on educational and promotional programs to help develop markets for Washington wheat.

(4) To provide methods and means for participation in whatever federal or other programs have been or may be established to make available gifts or grants for the promotion of marketing of Washington wheat in foreign countries.

(5) To promote and assist in carrying into effect production research into such matters as the development of superior varieties of wheat; methods by which yield in wheat may be increased; disease and the development of disease-resistant varieties of wheat; and more efficient means of processing, handling and marketing of wheat.

(6) To investigate and make recommendations against trade practices detrimental to the wheat industry.

(7) To promote the maintenance of uniform grades and standards suitable to marketing needs and adequate to protect the consumer. [1961 c 87 § 3.]

**15.63.040 Creation of wheat commission—Composition—Qualifications.** There is hereby created the Washington state wheat commission. The commission shall be composed of five members who shall be producers elected as provided in RCW 15.63.060 and two members who shall be appointed by the producer members so elected. The director shall be an ex officio member of the commission without vote.

The members of the commission shall be citizens and residents of the state and over the age of twenty-five years. The elective producer members shall be producers of wheat in the district in and for which they are nominated and elected. The qualifications of members of the commission must continue during their term of office. [1961 c 87 § 4.]

**15.63.050 Districts created—Producer members to be elected from each district.** For the purposes of this chapter, the state of Washington is divided into five districts as follows:

(1) District 1: The counties of Ferry, Lincoln, Pend Oreille, Spokane, and Stevens;

(2) District 2: The county of Whitman;

(3) District 3: The counties of Asotin, Columbia, Garfield, and Walla Walla;

(4) District 4: The counties of Adams, Chelan, Douglas, Grant, and Okanogan;

(5) District 5: All other counties of the state of Washington, including the counties of Western Washington and the counties of Benton, Franklin, Kittitas, Klickitat, and Yakima in Eastern Washington.

From each district a producer member shall be elected to the commission. [1961 c 87 § 5.]

**15.63.060 Terms of members.** The term of office for each member shall be three years from the date of election and until his successor is elected and qualified, except, however, that the first terms of the initial elective producer members of the commission whose terms begin on December 31, 1961 shall be as follows: Terms of members from districts 1 and 2 shall terminate December 31, 1962; terms of members from districts 3 and 4 shall terminate December 31, 1963; and terms of members from district 5 shall terminate December 31, 1964.

The two appointed members of the commission shall be elected to terms of three years by a majority vote of the elected producer members at the first commission meeting, except, however, that the term of the member first appointed during the meeting shall terminate December 31, 1963, and the term of the remaining appointed member shall terminate December 31, 1964. Thereafter such positions shall be filled by majority vote of the elected producer members at the last meeting held prior to termination of term of office. [1961 c 87 § 6.]

**15.63.070 Nomination and election procedure.** Nominations to fill vacancies in the commission shall be made by written petition signed by not less than five wheat producers residing in the district wherein the vacancy will occur. Nominating petitions shall be sent by the director upon request to any wheat producer residing in such district. Such petitions shall be sent not earlier than September 17 and not later than October 2. Nominating petitions must be filed with the director not earlier than October 8 and not later than October 13.

Members of the commission shall be elected by secret mail ballot under supervision of the director. Ballots shall be mailed not earlier than October 18 and not later than November 2 to all wheat producers listed in the district where a vacancy will occur. They shall be returned to the director postmarked not later than November 16.

In establishing a list of producers, the director shall use the most current and complete list on file in the state department of agriculture. For any areas of the state for which such a list is not complete or current, the director may establish a supplementary list in the following manner: He shall publish a notice to wheat producers in the area involved, requiring them to file with the director a certified report showing the producer's name, mailing address, and the yearly average quantity of wheat produced by him in the five years preceding the date of the notice or in such lesser time as the producer has produced wheat. The notice shall be published once a week for four consecutive weeks in one or more newspapers of general circulation within the district. All reports shall be filed with the director within twenty days from the last date of publication of the notice, or within thirty days after the mailing of the notice to affected producers, whichever is the later. The director shall keep his list of producers at all times as current and complete as possible and may require information from affected producers at various times in accordance with rules and regulations prescribed by him.

Members of the commission shall be elected by a majority of votes cast by the wheat producers residing in the district, each producer being entitled to one vote. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

The nomination and election of the initial members of the commission whose terms of office commence on December 31, 1961 shall be in accordance with the procedure set forth in this section.

The director shall provide reasonable public notice of the impending vacancy in each district in which a vacancy may occur, such notice to consist at a minimum of publication once a week for four consecutive weeks in one or more newspapers of general circulation within the district, and shall call for nominations in such notice: *Provided*, That nonreceipt of the notice by any interested person shall not invalidate the election. [1961 c 87 § 7.]

**15.63.080 Effective date of chapter—Nomination and election procedure, terms of office postponed and modified if prior law held invalid.** In the event that by reason of the contingency specified in RCW 15.63.910, this chapter shall take effect between August 17, 1961 and February 28, 1962, the nomination and election procedures for the first election of the commission shall be postponed so that the assessment authorized by this chapter may be made on the 1962 wheat crop. Should this occur nominating petitions shall be sent by the director not earlier than the 17th day of the month following the month in which the chapter takes effect. From that time, nomination and election procedures shall continue on a time schedule parallel to that specified in RCW 15.63.060 and 15.63.070. Terms of office of commission members shall begin on the last day of the month bearing the same relation to the month in which the earliest nominating petitions are filed as December does to September. Terms of office of commission members elected under the emergency procedure set forth in this section shall terminate as set forth in RCW 15.63.060, without change as a result of the adoption of such procedure. [1961 c 87 § 8.]

**Reviser's note:** As to the effective date of this chapter, see RCW 15.63.910 and 15.63.920.

**15.63.090 Vacancies.** (1) In the event that an elective position becomes vacant because of failure to qualify, resignation, disqualification, removal, death, or for any other reason, such position shall be filled by majority vote of the remaining members of the commission until an election can be held in the manner provided for in RCW 15.63.070. At such election a commissioner shall be elected to fill the balance of the unexpired term.

(2) In the event that a nonelective position becomes vacant for reasons other than expiration of the term of office, the position shall be filled for the balance of the unexpired term by majority vote of the remaining members of the commission at the first meeting following the occurrence of the vacancy. [1961 c 87 § 9.]

**15.63.100 Removal of members—Notice and hearing.** A member of the commission may be removed by the director for malfeasance, misfeasance or neglect of duty, after being given a copy of written charges and an opportunity to be heard publicly. In addition to other causes, failure to retain the qualifications for holding office is sufficient cause for removal. [1961 c 87 § 10.]

**15.63.110 Per diem and expenses.** Members of the commission shall receive no salary, but each member shall receive the sum of twenty dollars for each day actually spent in attendance at or in traveling to and from meetings of the commission, or on special assignment for the commission, together with subsistence and travel expenses at the rate allowed by law to state employees. [1961 c 87 § 11.]

**15.63.120 Meetings—Notice—Quorum—Procedure—Office—Records open to inspection.** (1) The commission shall meet as soon as practicable for the purpose of organizing. Thereafter the commission

shall meet at least once every three months regularly at such time and place as shall be fixed by resolution of the commission.

(2) The commission shall hold an annual meeting for the presentation of an annual report and proposed budget. Notice of time and place of the annual meeting shall be given by the commission at least ten days prior thereto through notification sent to the regular wire services, newspapers, and radio, and television stations.

(3) The commission shall establish by resolution, the time, place and manner of calling special meetings. Reasonable notice of such meetings shall be given to each commission member and to the public.

(4) Five members shall constitute a quorum. Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(5) The procedure followed by the commission shall be governed in all applicable respects by the provisions of chapter 34.04, the administrative procedure act, as in force on the effective date of this chapter, or as thereafter amended.

(6) The commission shall, by resolution, establish and maintain an office where books, records, and minutes shall be kept.

(7) All meetings of the commission shall be open to the public. All of its records, books and minutes shall be available for public inspection. [1961 c 87 § 12.]

**Reviser's note:** As to the effective date of this chapter, see RCW 15.63.080, 15.63.910 and 15.63.920.

**15.63.130 Director's right to approve or disapprove orders, rules, or directives—Review.** The director shall attend each meeting of the commission, and shall retain the right to approve or disapprove every order, rule or directive issued by the commission or any action taken by it, such approval or disapproval to be based on whether or not he believes the order, rule, or directive in question to have been issued in conformity with the purposes of this chapter and the powers granted to effectuate them. The decision of the director shall be final, subject to the judicial review authorized by RCW 15.63.240. [1961 c 87 § 13.]

**15.63.140 Powers and duties in general.** (1) Consistently with the general purposes of this chapter, it shall be the duty of the commission to establish the policies to be followed in the effectuation of its provisions.

(2) In the administration of this chapter the commission shall have the following particular duties and powers:

(a) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties;

(b) To administer, enforce, direct and control the provisions of this chapter;

(c) To establish plans and conduct programs for education, advertising and sales promotion for the purposes of maintaining present markets, to create new or larger markets for wheat grown in the state of Washington,

and to promote improved public understanding of the problems confronting the wheat industry;

(d) To provide for carrying on research studies to find more efficient methods of production, processing, handling and marketing of wheat;

(e) To make studies and recommendations for the improvement of standards and grades of wheat;

(f) To investigate, report and recommend the correction of policies and practices detrimental to the Washington wheat industry;

(g) To collect the assessments of producers as provided for in this chapter and to expend the same in accordance with the purposes and provisions thereof;

(h) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(i) To accept and receive gifts and grants and expend the same;

(j) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms as it may deem appropriate to assist it in carrying out the purposes of this chapter: *Provided*, That any attorney selected must be approved by the attorney general;

(k) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(l) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organization or agencies for the purposes specified in this chapter;

(m) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, or commission, whether domestic or foreign, whenever such action is not prohibited by law, for the purpose of promoting the general welfare of the wheat industry, and particularly for the purpose of assisting in the sale and distribution of wheat in domestic or foreign commerce; and to expend its funds, or such portion thereof as it may deem advisable for such purpose, and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of wheat in foreign countries;

(n) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter;

(o) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by agencies of the state;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;



(r) To establish an interest bearing reserve fund in any bank selected by the commission which is an approved state depository, if, in the opinion of the commission, the establishment of such a fund will further the purposes of this chapter;

(s) To exercise all express and implied rights, powers and authority that may be necessary to perform and carry out the expressed purposes of this chapter, and all of the purposes reasonably implied incidentally thereto, and lawfully connected therewith. [1961 c 87 § 14.]

**15.63.150 Assessments—Imposed—Collection—Lien.** It is hereby assessed and levied and the commission shall collect an assessment at the rate of one-fourth cent per bushel upon the sale or disposition of all wheat grown in this state and sold through commercial channels, such assessment to be used for the benefit of the wheat industry as provided in this chapter. The assessment shall begin with and include wheat harvested in the crop of the fiscal year 1962, and shall include each and every crop thereafter. It shall be levied and assessed to the producer at the time of sale, and shall be deducted by the first purchaser from the price paid to the producer at the time of sale, or, in the case of a pledge or mortgage of wheat as a security for a loan under any federal price support program or otherwise, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan, at the time the loan is made by the agency or person making the loan. The assessment shall be deducted as provided in this section whether the wheat is stored in this or any other state. No assessment shall be levied or collected on wheat grown and used by the producer for feed, seed or personal consumption. The assessment constitutes a lien prior to all other liens and encumbrances upon such wheat. [1961 c 87 § 15.]

**15.63.160 Method of collecting assessments.** The commission shall by rule or regulation prescribe the method of collection of the assessment, and for that purpose may require handlers receiving wheat from the producer, including warehousemen and processors, to collect producer assessments from producers whose wheat they handle and remit the same to the commission. [1961 c 87 § 16.]

**15.63.170 Records, returns of producers and handlers—Form, inspection.** Each producer and handler shall keep a complete and accurate record of all wheat grown, handled, shipped, or processed by him. This record shall be in such form and contain such information as the commission may by rule and regulation prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents.

Each producer and handler shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of wheat

handled, shipped, or processed by him during the period prescribed by the commission. The return shall contain such further information as the commission shall require.

The commission may inspect the records of any producer or handler during reasonable business hours for the purpose of enforcing this chapter and the collection of the assessment. [1961 c 87 § 17.]

**15.63.180 Credit and refund to producers for excess payments.** At the end of each fiscal year, the commission shall credit each producer with any amount over one dollar paid by such producer in excess of one-fourth cent per bushel of wheat. Refund may be made upon satisfactory proof given by the producer in accordance with reasonable rules and regulations prescribed by the commission. [1961 c 87 § 18.]

**15.63.190 Secretary-treasurer—Bond.** The commission shall appoint a secretary-treasurer who shall file with it a bond executed by a surety company authorized to transact surety business in the state of Washington, in favor of the commission and the state, in the penal sum of fifty thousand dollars, guaranteeing the faithful performance of his duties and strict accounting of all funds of the commission. [1961 c 87 § 19.]

**15.63.200 Deposits of funds—Use.** All moneys received or collected by the commission, or by any other state official from the assessment herein levied or from any other source in accordance with the terms and provisions of this chapter, shall be paid to the secretary-treasurer, deposited in such banks, which are approved state depositories, as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall be applicable to any moneys received or collected under the terms of this chapter. Moneys received or collected hereunder shall be used only to pay for costs and expenses incurred in effectuating the provisions and purposes of this chapter. [1961 c 87 § 20.]

**15.63.210 Liability of commission's assets—Immunity of state, commission, employees, etc., from liability.** Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee or agent of the commission in his individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees shall be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, save for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not

joint, and no member shall be liable for the default of any other member. [1961 c 87 § 21.]

**15.63.220 Penalties.** Any person who violates or aids in the violation of any provision of this chapter, or any person who violates or aids in the violation of any rule or regulation of the commission shall be guilty of a misdemeanor. [1961 c 87 § 22.]

**15.63.230 Enforcement—Injunctions—Venue.** All county and state enforcement officers and all employees and agents of the department of agriculture shall aid in the enforcement of this chapter. The superior courts are vested with jurisdiction to enforce the provisions thereof, and the rules and regulations issued thereunder, and to prevent and restrain violations thereof. The commission may bring in its own name an action to enjoin the violation or threatened violation of any provision of this chapter, or any rules adopted under this chapter, notwithstanding the existence of any other remedy at law, and for cause shown may obtain upon prompt hearing a temporary or permanent injunction restraining any person from such violation or threatened violation. Any prosecution brought under this chapter may be instituted in any county of which the defendant, or any defendant, is a resident, or in which the violation was committed, or in which the defendant, or any defendant, has his principal place of business. [1961 c 87 § 23.]

**15.63.240 Judicial review.** Any party aggrieved by any order, rule or regulation issued by the commission, or by any action taken by it, or by any action taken by the director in approving or disapproving any action of the commission, may apply to the superior court of the state of Washington in the county in which such party is a resident or has his principal place of business for a review of such decision. Where applicable, the procedure for such a review shall be that specified in chapter 34.04 RCW, the administrative procedure act, as in force on the effective date of this chapter, or as thereafter amended. The court may thereupon take such action as in its opinion the law requires and its decision shall be appealable to the supreme court or the court of appeals of this state subject to the laws and rules of court relating to appeals. [1972 ex.s. c 8 § 1; 1971 c 81 § 55; 1961 c 87 § 24.]

**Reviser's note:** As to the effective date of this chapter see RCW 15.63.080, 15.63.910 and 15.63.920.

**15.63.900 Severability—1961 c 87.** If any section, sentence, clause, or word of this chapter shall be held to be unconstitutional, the invalidity of such section, sentence, clause, or word shall not affect the validity of any other provisions of this chapter, it being the intent of the legislature to enact the remainder of this chapter, notwithstanding the unconstitutionality of any such part. [1961 c 87 § 25.]

**15.63.910 Operative, termination date of chapter—Effect of other laws.** This chapter shall not take effect and become operative unless and until such time as the

wheat commission created by the Marketing Order for Washington Wheat issued on December 4, 1957 by the director, acting under the terms of chapter 15.66 RCW, is declared in a final decision of the supreme court of the state of Washington to have been invalidly created either by reason of the unconstitutionality, in whole or in part, of said chapter or for any other reason. This chapter has been passed in order that continuity of wheat commission activities may be assured throughout the biennium and in the future; therefore, in the event the existing wheat commission should be held by the supreme court of the state of Washington to have been constitutionally and validly created, this chapter shall be of no force and effect whatsoever. [1961 c 87 § 26.]

*Order creating wheat commission upheld: Robison v. Dwyer, 58 Wn. (2d) 576, 364 P. (2d) 521 (1961).*

**15.63.920 Conditional emergency clause.** Should the wheat commission created by the Marketing Order for Washington Wheat issued on December 4, 1957 by the director, acting under the terms of chapter 15.66 RCW, be declared to have been unconstitutionally or invalidly created this chapter will become necessary for the preservation of the public peace, health and safety, and the support of the state government and its existing public institutions, and upon the occurrence of that contingency, shall take effect immediately. [1961 c 87 § 27.]

## Chapter 15.64 FARM MARKETING

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**15.64.010 Director's duties and powers.** The director shall investigate and promote the economical and efficient distribution of farm products, and in so doing may cooperate with federal agencies and agencies of this and other states engaged in similar activities. For such purposes he may:

(1) Maintain a market news service by bulletins and through newspapers, giving information as to prices, available supplies of different farm products, demand in local and foreign markets, freight rates, and any other data of interest to producers and consumers;

(2) Aid producers and consumers in establishing economical and efficient methods of distribution, promoting more direct business relations by organizing cooperative societies of buyers and sellers and by other means reducing the cost and waste in the distribution of farm products;

(3) Investigate the methods of middlemen handling farm products, and in so doing, he may hear complaints and suggestions and may visit places of business of all such middlemen and may examine under oath, the officers and employees thereof;

(4) If he finds further legislation on this subject advisable, he shall make recommendations thereon to the

governor not later than the fifteenth of November of each even-numbered year;

(5) Investigate the possibilities of direct dealing between the producer and consumer by parcel post and other mail order methods;

(6) Assist in the obtaining and employment of farm labor, and to that end cooperate with federal, state and municipal agencies engaged in similar work;

(7) Investigate the methods, charges and delays of transportation of farm products and assist producers in relation thereto. [1961 c 11 § 15.64.010. Prior: 1917 c 119 § 3; RRS § 2876.]

**15.64.020 Annual report of director.** On or before the first day of December of each year the director shall submit to the director of the agricultural experiment station a report of the activities of his department hereunder and such other facts, suggestions, or recommendations as he deems of value to the people. [1961 c 11 § 15.64.020. Prior: 1917 c 119 § 4; RRS 2877.]

**15.64.030 Studies of farm marketing problems—Rules.** The director shall enact rules and regulations governing the pursuit of technical studies of farm marketing problems. Said studies shall be under the supervision of the director of the experimental station of Washington State University. The extension service of Washington State University shall provide for dissemination to the public of knowledge gained by such studies. [1961 c 11 § 15.64.030. Prior: 1947 c 280 § 2; Rem. Supp. 1947 § 2909-2.]

**15.64.040 Use of funds for studies—Joint studies with other agencies.** Moneys appropriated to the department for agricultural marketing research shall be expended by the department to further studies by the department, the experiment station of Washington State University and the extension service of Washington State University. The studies shall be made jointly or in conjunction with those made by the United States Department of Agriculture as provided for in the Flannigan-Hope Act, Title II "The Agricultural Marketing Act of 1946" Public Law 733. All funds appropriated shall be expended jointly and as matching funds with any federal funds made available for such purposes. [1961 c 11 § 15.64.040. Prior: 1947 c 280 § 1; Rem. Supp. 1947 § 2909-1.]

### Chapter 15.65 WASHINGTON STATE AGRICULTURAL ENABLING ACT OF 1961

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*Agricultural processing and marketing associations: Chapter 24.34 RCW.*

*Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 30.04.370.*

**15.65.010 Short title.** This chapter shall be known and may be cited as the Washington state agricultural enabling act. [1961 c 256 § 1.]

**15.65.020 Definitions.** The following terms are hereby defined:

- (1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative. The phrase "director or his designee" means the director unless, in the provisions of any marketing agreement or order, he has designated an administrator, board or other designee to act for him in the matter designated, in which case "director or his designee" means for such order or agreement the administrator, board or other person(s) so designated and not the director.
- (2) "Department" means the department of agriculture of the state of Washington.
- (3) "Marketing order" means an order issued by the director pursuant to this chapter.
- (4) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(5) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable or animal product, either in its natural or processed state, including bees and honey but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or sub-types should be classed together as an agricultural commodity for the purposes of this chapter.

(6) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(7) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

(8) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is sold or marketed or delivered for sale or marketing within such marketing area: *Provided*, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

(9) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(10) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer of an affected commodity. "To produce" means to act as a producer.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity which was not produced by him. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he produces, and a handler with respect to the agricultural commodities which he handles, including those produced by himself.

(13) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and

which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(14) "Member of a cooperative association" means any producer who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(15) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(16) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent man engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent man engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case the director may in his discretion: (a) determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he finds to be similarly situated.

(17) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(18) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(19) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

(20) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter.

(21) "Person" as used in this chapter shall mean any person, firm, association or corporation. [1961 c 256 § 2.]

**15.65.030 Declaration of purpose and police power.** The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of this chapter to promote the general welfare of the state by enabling producers of agricultural commodities to help themselves, in establishing orderly, fair, sound, efficient and unhampered marketing, grading and standardizing of the commodities they produce, and in promoting and increasing the sale and proper use of such commodities. This chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety and general welfare of the people of this state. [1961 c 256 § 3.]

**15.65.040 Declaration of policy.** It is hereby declared to be the policy of this chapter:

(1) To aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities and in developing more efficient methods of marketing agricultural products.

(2) To enable agricultural producers of this state, with the aid of the state: (a) To develop, and engage in research for developing, better and more efficient production, marketing and utilization of agricultural products; (b) to establish orderly marketing of agricultural commodities; (c) to provide for uniform grading and proper preparation of agricultural commodities for market; (d) to provide methods and means (including, but not limited to, public relations and promotion) for the maintenance of present markets and for the development of new or larger markets, both domestic and foreign, for agricultural commodities produced within this state and for the prevention, modification or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market; (e) to eliminate or reduce economic waste in the marketing and/or use of agricultural commodities; (f) to restore and maintain adequate purchasing power for the agricultural producers of this state; and (g) to accomplish all the declared policies of this chapter.

(3) To protect the interest of consumers by assuring a sufficient pure and wholesome supply of agricultural commodities of good quality at all seasons and times. [1961 c 256 § 4.]

**15.65.050 Director to enforce and administer chapter—Marketing agreements, orders issued, amended, terminated only under chapter, notice, grounds for amendments and termination.** The director shall administer and enforce this chapter and it shall be his duty to carry out its provisions and put them into force in accordance with its terms, but issuance, amendment, modification, suspension and/or termination of marketing agreements and orders and of any terms or provisions thereof shall be accomplished according to the procedures set forth in this chapter and not otherwise. Whenever he has reason to believe that the issuance, amendment or termination of a marketing agreement or order will tend to effectuate any declared policy of this chapter with respect to any agricultural commodity, and in the case of application for issuance or amendment ten or more producers of such commodity apply

or in the case of application for termination ten percent of the affected producers so apply, then the director shall give due notice of, and an opportunity for, a public hearing upon such issuance, amendment or termination, and he shall issue marketing agreements and orders containing the provisions specified in this chapter and from time to time amend or terminate the same whenever upon compliance with and on the basis of facts adduced in accordance with the procedural requirements of this chapter he shall find that such agreement, order or amendment:

(1) Will tend to effectuate one or more of the declared policies of this chapter and is needed in order to effectuate the same.

(2) Is reasonably adapted to accomplish the purposes and objects for which it is issued and complies with the applicable provisions of this chapter.

(3) Has been approved or favored by the percentages of producers and/or handlers specified in and ascertained in accordance with this chapter. [1961 c 256 § 5.]

**15.65.060 Form, filing of proposed agreement, order, amendment, termination and other proceedings.** The director shall cause any proposed marketing agreement, order, amendment or termination to be set out in detailed form and reduced to writing, which writing is herein designated "proposal." The director shall make and maintain on file in the office of the department a copy of each proposal and a full and complete record of all notices, hearings, findings, decisions, assents, and all other proceedings relating to each proposal and to each marketing agreement and order. [1961 c 256 § 6.]

**15.65.070 Notice of hearing on proposal—Publication—Contents.** The director shall publish notice of any hearing called for the purpose of considering and acting upon any proposal for a period of not less than five days in a newspaper of general circulation in Olympia and such other newspapers as the director may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice shall set forth the date, time and place of said hearing, the agricultural commodity and the area covered by such proposal; a concise statement of the proposal; a concise statement of each additional subject upon which the director will hear evidence and make a determination, and a statement that, and the address where, copies of the proposal may be obtained. The director shall also mail a copy of such notice to all producers and handlers who may be directly affected by such proposal and whose names and addresses appear, on the day next preceding the day on which such notice is published, upon lists of such persons then on file in the department. [1961 c 256 § 7.]

**15.65.080 Hearings public—Oaths—Record—Hearing examiner, powers.** Every hearing held pursuant to this chapter shall be public and all testimony shall be received under oath and a permanent record thereof maintained. The director may designate an employee of the department or other qualified person as an examiner (which person is designated herein, "hearing examiner")

in any inquiry, investigation, hearing or proceeding held pursuant to this chapter and for such purpose such examiner may exercise any power herein conferred upon the director in connection therewith, including the power to administer oaths, examine witnesses and to issue subpoenas. At each such hearing the director shall receive evidence with respect to all of the matters and things upon which he must make a finding. [1961 c 256 § 8.]

**15.65.090 Subpoenas—Compelling attendance of witnesses, fees—Immunity of witnesses.** In any and every hearing conducted pursuant to any provision of this chapter the director and/or such examiner shall have the power to issue subpoenas for the production of any books, records or documents of any kind and to subpoena witnesses to be produced or to appear (as the case may be) in the county wherein the principal party involved in such hearing resides. No person shall be excused from attending and testifying or from producing documentary evidence before the director in obedience to the subpoena of the director on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no natural person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The superior court of the county in which any such hearing or proceeding may be had, may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. In case any witness refuses to attend or testify or produce any papers required by the subpoena, the director or his examiner shall so report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice was given of the time and place of attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that the fees and mileage of the witness have been paid or tendered to him in accordance with RCW 2.40.020 and that he has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in the notice and subpoena, or has refused to answer questions propounded to him in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel such witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there show cause why he has not responded to the subpoena. A certified copy of the show cause order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued, the court shall enter a decree that said witness appear at the time and place fixed in the



decree and testify or produce the required papers, and on failing to obey said decree the witness shall be dealt with as for contempt of court. [1961 c 256 § 9.]

**15.65.100 Director's findings and recommended decision, delivery of copies—Taking official notice of facts from other agencies.** The director shall make and publish findings based upon the facts, testimony and evidence received at the public hearings together with any other relevant facts available to him from official publications of the United States or any state thereof or any institution of recognized standing and he is hereby expressly empowered to take "official notice" of the same. Such findings shall be made upon every material point controverted at the hearing and/or required by this chapter and upon such other matters and things as the director may deem fitting and proper. The director shall issue a recommended decision based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record. [1961 c 256 § 10.]

**15.65.110 Filing objections to recommended decision—Final decision—Waiver.** After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections or exceptions with the director. Thereafter the director shall take such objections and exceptions as are filed into consideration and shall issue and publish his final decision which may be the same as the recommended decision or may be revised in the light of said objections and exceptions. Upon written waiver executed by all parties of record at any hearing or by their attorneys of record the director may in his discretion omit compliance with the provisions of this section. [1961 c 256 § 11.]

**15.65.120 Contents and scope of recommended and final decision—Delivery of copies.** The recommended decision shall contain the text in full of any recommended agreement, order, amendment or termination, and may deny or approve the proposal in its entirety, or it may recommend a marketing agreement, order, amendment or termination containing other or different terms or conditions from those contained in the proposal: *Provided*, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The final decision shall set out in full the text of the agreement, order, amendment or termination covered thereby, and the director shall issue and deliver or mail copies of said final decision to all producers and handlers who may be directly affected by such final decision and whose names and addresses appear, on the day next preceding the day on which such final decision is issued, upon the lists of such persons then on file in the department, and to all

parties of record appearing at the hearing, or their attorneys of record. If the final decision denies the proposal in its entirety no further action shall be taken by the director. [1961 c 256 § 12.]

**15.65.130 Agreements binding only on those who assent in writing—Agreement not effective until sufficient signatories to effectuate chapter—When effective.** With respect to marketing agreements, the director shall after publication of his final decision, invite all producers and handlers affected thereby to assent or agree to the agreement or amendment set out in such decision. Said marketing agreements or amendments thereto shall be binding upon and only upon persons who have agreed thereto in writing and whose written agreement has been filed with the director: *Provided*, That the filing of such written agreement by a cooperative association shall be binding upon such cooperative and all of its members, and *Provided, further*, That the director shall enter into and put into force a marketing agreement or amendment thereto when and only when he shall find in addition to the other findings specified in this chapter that said marketing agreement or any amendment thereto has been assented to by a sufficient number of signatories who handle or produce a sufficient volume of the commodity affected to tend to effectuate the declared policies and purposes of this chapter and to accomplish the purposes and objects of such agreement or amendment thereto and provide sufficient moneys from assessments levied to defray the necessary expenses of formulation, issuance, administration and enforcement. Such agreement shall be deemed to be issued and put into force and effect when the director shall have so notified all persons who have assented thereto. [1961 c 256 § 13.]

**15.65.140 Minimum assent requirements prerequisite to order or amendment affecting producers or producer marketing.** No marketing order or amendment thereto directly affecting producers or producer marketing shall be issued unless the director determines (in accordance with any of the procedures described at RCW 15.65-.160) that the issuance of such order or amendment is assented to or favored by producers who during a representative period determined by the director constituted either (1) at least sixty-five percent by numbers and at least fifty-one percent by volume of production of the producers who have been engaged within the area of production specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for marketing in the marketing area specified in such marketing order, or (2) at least fifty-one percent by numbers and at least sixty-five percent by volume of production of such producers. [1961 c 256 § 14.]

**15.65.150 Minimum requirements prerequisite to order or amendment affecting handlers—Assent by producers.** Any marketing order or amendment thereto directly affecting handlers shall be issued either (1) when the director determines that the issuance of such



order or amendment is assented to or favored by handlers who during a representative period determined by the director constituted at least fifty-one percent by numbers or fifty-one percent by volume handled of the handlers who have been engaged in the handling of the commodity specified in such marketing order produced in such production area or marketed in such marketing area, as the case may be, or (2) when upon the basis of findings on a duly noticed hearing held in the manner herein provided, the director determines:

(a) That the issuance of such order or amendment will not result in unequal cost of product or availability of supplies, or cause competitive disadvantage of other respects as between handlers;

(b) That the issuance of such order or amendment is the only practical means of advancing the interest of producers of such commodity pursuant to the declared policy of this chapter and that failure to issue such order or amendment would tend to prevent effectuation of the declared policies of this chapter;

(c) That the issuance of such order is assented to or favored by producers who during a representative period determined by the director constituted at least seventy-five percent by numbers or at least sixty-five percent by volume of production of the producers who have been engaged within the production area specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for sale in the marketing area specified in such order. [1961 c 256 § 15.]

**15.65.160 Ascertainment of required assent percentages.** After publication of his final decision, the director shall ascertain (either by written agreement in accordance with subdivision (1) of this section or by referendum in accordance with subdivision (2) of this section) whether the above specified percentages of producers and/or handlers assent to or approve any proposed order, amendment or termination, and for such purpose:

(1) The director may ascertain whether assent or approval by the percentages specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) have been complied with by written agreement, and the requirements of assent or approval shall, in such case, be held to be complied with, if of the total number of affected producers or affected handlers and the total volume of production of the affected commodity or product thereof, the percentages evidencing assent or approval are equal to or in excess of the percentages specified in said sections; or

(2) The director may conduct a referendum among producers and the requirements of assent or approval shall be held to be complied with if of the total number of producers and the total volume of production represented in such referendum the percentage assenting to or favoring is equal to or in excess of the percentage specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable): *Provided*, That thirty percent of the affected producers producing thirty percent by

volume of the affected commodity have been represented in the referendum: *Provided further*, That a marketing order shall not become effective when the provisions of subdivision (3) of this section are used unless sixty-five percent by number of the affected producers producing fifty-one percent by volume of the affected commodity or fifty-one percent by number of the affected producers producing sixty-five percent by volume of the affected commodity approve such marketing order;

(3) The director shall consider the assent or dissent or the approval or disapproval of any cooperative marketing association authorized by its producer members either by a majority vote of those voting thereon or by its articles of incorporation or by its bylaws or by any marketing or other agreement to market the affected commodity for such members or to act for them in any such referendum as being the assent or dissent or the approval or disapproval of the producers who are members of or stockholders in or under contract with such cooperative association of producers: *Provided*, That the association shall first determine that a majority of its affected producers authorizes its action concerning the specific marketing order. [1961 c 256 § 16.]

**15.65.170 Issuance of order or amendment—Publication—Force and effect.** If the director determines that the requisite assent has been given he shall issue and put any order or amendment thereto into force, whereupon each and every provision thereof shall have the force of law. Issuance shall be accomplished by publication for one day in a newspaper of general circulation in Olympia and in the affected area of notice stating that the order has been issued and put into force and where copies of such order may be obtained. If the director determines that the requisite assent has not been given no further action shall be taken by the director upon the proposal, and the order contained in the final decision shall be without force or effect. [1961 c 256 § 17.]

**15.65.180 Amendment, suspension of agreement or order upon advice of commodity board—Certain prerequisites waived.** The director may, upon the advice of the commodity board serving under any agreement or order and without compliance with the provisions of RCW 15.65.050 through 15.65.170:

(1) Amend any marketing agreement or order as to any minor matter or wording which does not substantially alter the provisions and intention of such agreement or order;

(2) Suspend any such agreement or order or term or provision thereof for a period of not to exceed one year, if he finds that such suspension will tend to effectuate the declared policy of this chapter: *Provided*, That any such suspension of all or substantially all of such agreement or order shall not become effective until the end of the then current marketing season. [1961 c 256 § 18.]

**15.65.190 Termination of agreement or order on assent of producers—Procedure.** Any marketing agreement or order shall be terminated if the director finds

that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers favor or assent to such termination. The director may ascertain without compliance with the provisions of RCW 15.65.050 through 15.65.130 whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of said producers file written application with him for such termination. No such termination shall become effective until the expiration of the marketing season then current. [1961 c 256 § 19.]

**15.65.200 Lists of producers, handlers, commodities—Correction—Purpose and use.** Whenever application is made for the issuance of a marketing agreement or order or the director otherwise determines to hold a hearing for the purpose of such issuance, the director or his designee shall cause lists to be prepared from any information which he has at hand or which he may obtain from producers, associations of producers and handlers of the affected commodity. Such lists shall contain the names and addresses of persons who produce the affected commodity, the amount of such commodity produced by each such person during the period which the director determines for the purposes of the agreement or order to be representative, and the name of any cooperative association authorized to market for him the commodity specified in the marketing agreement or order. Such lists shall also contain the names and addresses of persons who handle the affected commodity and the amount of such commodity handled by each person during the period which the director determines for the purposes of the agreement or order to be representative. Any qualified person may at any time have his name placed upon any list for which he qualifies by delivering or mailing his name, address and other information to the director and in such case the director shall verify such person's qualifications and if he qualifies, place his name upon such list. At every hearing upon the issuance, amendment or termination of such order or agreement the director or his designee shall take evidence for the purpose of making such lists complete and accurate and he may employ his powers of subpoena of witnesses and of books, records and documents for such purpose. After every such hearing the director shall compile, complete, correct and bring lists up to date in accordance with the evidence and information obtained at such hearing. For all purposes of giving notice, holding referenda and electing members of commodity boards, the lists on hand corrected up to the day next preceding the date for issuing notices or ballots as the case may be shall, for all purposes of this chapter, be deemed to be the list of all persons entitled to notice or to assent or dissent or to vote. [1961 c 256 § 20.]

**15.65.210 Powers and duties of director with respect to the administration and enforcement of agreements and orders—Administrator—Personnel.** The director shall administer, enforce, direct, and control every marketing agreement and order in accordance with its provisions. For such purposes he shall include in each

order and he may include in each agreement provisions for the employment of such administrator and such additional personnel (including attorneys engaged in the private practice of law, subject to the approval and supervision of the attorney general) as he determines are necessary and proper for such order or agreement to effectuate the declared policies of this chapter. Such provisions may provide for the qualifications, method of selection, term of office, grounds of dismissal and the detailed powers and duties to be exercised by such administrator or board and by such additional personnel, and may also provide either that the said administrative board shall be the commodity board or that the administrator or administrative board be designated by the director or the governor. [1961 c 256 § 21.]

**15.65.220 Commodity boards—Membership—Agreement or order to establish and control.** Every marketing agreement and order shall provide for the establishment of a commodity board of not less than five nor more than thirteen members and shall specify the exact number thereof and all details as to qualification, nomination, election, term of office, powers, duties and all other matters pertaining to such board. The members of the board shall be producers or handlers or both in such proportion as the director shall specify in the agreement or order, but in any marketing order the number of handlers on the board shall not exceed the number of producers thereon. The director shall appoint to every such board one person who is neither a producer nor a handler to represent the department and the public generally. [1961 c 256 § 22.]

**15.65.230 Qualifications of members of commodity boards.** The producer members of each such board shall be practical producers of the affected commodity and shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in producing such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom and who is not engaged in business, directly or indirectly, as a handler or other dealer. The handler members of such board shall be practical handlers of the affected commodity and shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been, either individually or as an officer or employee of a corporation, firm, partnership, association or cooperative, actually engaged in handling such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom. The qualification of members of the board as herein set forth must continue during their terms of office. [1961 c 256 § 23.]

**15.65.235 Producer-handlers as producers for qualification purposes—Exception.** Whenever any commodity board is formed under the provisions of this chapter and it only affects producers and producer-handlers, then such producer-handlers shall be considered to be acting only as producers for purpose of election and

membership on a commodity board: *Provided*, That this section shall not apply to a commodity board which only affects producers and producer-handlers of essential oils. [1971 c 25 § 1.]

**15.65.240 Terms of members of commodity boards—Elections.** The term of office of board members shall be three years, and one-third as nearly as may be shall be elected every year: *Provided*, That at the inception of any agreement or order the entire board shall be elected one-third for a term of one year, one-third for a term of two years and one-third for a term of three years to the end that memberships on such board shall be on a rotating basis. In the event an order or agreement provides that both producers and handlers shall be members of such board the terms of each type of member shall be so arranged that one-third of the handler members as nearly as may be and one-third of the producer members as nearly as may be shall be elected each year.

Any marketing agreement or order may provide for election of board members by districts, in which case district lines and the number of board members to be elected from each district shall be specified in such agreement or order and upon such basis as the director finds to be fair and equitable and reasonably adapted to effectuate the declared policies of this chapter. [1961 c 256 § 24.]

**15.65.250 Nominations for election to commodity board.** For the purpose of nominating candidates to be voted upon for election to such board memberships, the director shall call separate meetings of the affected producers and handlers and in case elections shall be by districts he shall call separate meetings for each district. However, at the inception any marketing agreement or order nominations may be at the issuance hearing. Nomination meetings shall be called annually and at least thirty days in advance of the date set for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all affected producers and/or handlers according to the list thereof maintained by the director pursuant to RCW 15.65.200. However, if the agreement or order provides for election by districts such written notice need be given only to the producers or handlers residing in or whose principal place of business is within such district. Nonreceipt of notice by any interested person shall not invalidate proceedings at such meetings. Any qualified person may be nominated orally for membership upon such board at the said meetings. Nominations may also be made within five days after any such meeting by written petition filed with the director signed by not less than five producers or handlers, as the case may be, entitled to have participated in said meeting. [1961 c 256 § 25.]

**15.65.260 Election of members of commodity board—Procedure.** The members of every such board shall be elected by secret mail ballot under the supervision of the director. Producer members of such board shall be elected by a majority of the votes cast by the affected producers, but if the marketing order or agreement provides for districts such producer members of the board shall be elected by a majority of the votes cast by the affected producers in the respective districts. Each affected producer shall be entitled to one vote. Handler members of the board shall be elected by a majority of the votes cast by the affected handlers, but if the marketing order or agreement provides for districts such handler members of the board shall be elected by a majority of the votes cast by the affected handlers in the respective districts. Each affected handler shall be entitled to one vote.

If a nominee does not receive a majority of the votes on the first ballot a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each producer and handler entitled to vote whose name appears upon the list thereof compiled and maintained by the director in accordance with RCW 15.65.200. Any other producer or handler entitled to vote may obtain a ballot by application to the director upon establishing his qualifications. Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election of any board member. [1961 c 256 § 26.]

**15.65.270 Vacancies, quorum, salary, expenses of commodity board members.** In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term. A majority of the voting members of the board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board. No member of the board shall receive any salary or other compensation but each member shall receive a sum to be specified in the marketing agreement or order not in excess of thirty-five dollars per day for each day spent in actual attendance on or traveling to and from meetings of the board or on special assignment for the board, together with subsistence and traveling expense at the rate allowed by law to state employees. [1961 c 256 § 27.]

**15.65.280 Powers and duties of commodity board—Reservation of power to director.** The powers and duties of the board shall be:

- (1) To elect a chairman and such other officers as it deems advisable;
- (2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;

(3) To recommend to the director administrative rules, regulations and orders and amendments thereto for the exercise of his powers in connection with such agreement or order;

(4) To advise the director upon any and all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;

(5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this chapter;

(6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;

(7) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so requested by the affected producers in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this chapter. [1961 c 256 § 28.]

**15.65.283 Members may belong to association with same objectives—Contracts with other associations authorized.** Any member of an agricultural commodity board may also be a member or officer of an association which has the same objectives for which the agricultural commodity board was formed. An agricultural commodity board may also contract with such association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 1.]

**15.65.285 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commodity boards.** The restrictive provisions of chapter 43.78 RCW, as now or hereafter amended, shall not apply to promotional printing and literature for any commodity board. [1972 ex.s. c 112 § 2.]

**15.65.290 Claims and liabilities, enforcement against organization—Personal liabilities of officials, employees, etc.** Obligations incurred by any administrator or board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted them by this chapter or any marketing agreement or order issued pursuant to this chapter, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under such marketing agreement or order were a corporation. No liability for the debts or actions of such administrator, board, employee or agent incurred in their official capacity under the agreement or order

shall exist either against its administrator, board, officers, employees and/or agents in his or their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator or board (or employee or agent thereof) established pursuant to this chapter or the assets thereof. The administrator of any order or agreement, the members of any such board, and also his or their agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other administrator, board, member of any such board, or other person. The liability of the members of any such board shall be several and not joint and no member shall be liable for the default of any other member. [1961 c 256 § 29.]

**15.65.300 Agreement or order to contain detailed statement of powers and purposes.** The purposes for which each marketing agreement and order is issued and the powers which shall be exercised thereunder shall be stated in detail in the provisions of such agreement or order. Any such agreement or order or amendment thereto may contain provisions for the exercise of any one or more or all of the powers and purposes set forth in RCW 15.65.310 through 15.65.340. However, any agreement, order or amendment wherein the affected commodity is one of those listed below shall contain provisions for the exercise of only those powers and purposes contained in said RCW 15.65.310 through 15.65.340 set after its name below, to wit:

(1) Wheat, RCW 15.65.310, 15.65.320 and 15.65.330. [1961 c 256 § 30.]

**15.65.310 Advertising, sale, trade barrier, claim, etc., provisions in agreement or order.** Any marketing agreement or order may provide for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for the affected commodity. It may also provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market. Each such order or agreement and all programs thereunder shall be directed toward increasing the sale of such commodity without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of such commodity nor disparage the quality, value, sale or use of any other agricultural commodity. [1961 c 256 § 31.]

**15.65.320 Agreement and order provisions for research.** Any marketing agreement or order may provide for research in the production, processing and/or distribution of the affected commodity and for the expenditure of money for such purposes. Insofar as practicable, such research shall be carried out by experiment stations of Washington state university but if in the judgment of the director or his designee said experiment

stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the director or his designee. [1961 c 256 § 32.]

**15.65.330 Agreement and order provisions for uniform grades and standards—Enforcement—Rules.** Any marketing agreement or order may contain provisions which directly provide for, or which authorize the director or his designee to provide by rules and regulations for, any one or more, or all, of the following: (1) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages and/or label for the affected commodity or any products thereof; (2) requiring producers, handlers and/or other persons to conform to such grades and/or standards in packing, packaging, processing, labeling, selling or otherwise commercially disposing of the affected commodity and/or in offering, advertising and/or delivering it therefor; (3) providing for inspection and enforcement to ascertain and effectuate compliance; (4) establishing rules and regulations respecting the foregoing; (5) providing that the director or his designee shall carry out inspection and enforcement of, and may (within the general provisions of the agreement or order) establish detailed provisions relating to, such standards and grades and such rules and regulations: *Provided*, That any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing, and shall not be considered an amendment for the purposes of this chapter. [1961 c 256 § 33.]

**15.65.340 Agreement and order provisions prohibiting or regulating certain practices.** Any marketing agreement or order may contain provisions prohibiting and/or otherwise regulating any one or more or all of the practices listed to the extent that such practices affect, directly or indirectly, the commodity which forms the subject matter of such agreement or order or any product thereof, but only with respect to persons who engage in such practices with the intent of or with the reasonably foreseeable effect of inducing any purchaser to become his customer or his supplier or of otherwise dealing or trading with him or of diverting trade from a competitor, to wit:

(1) Paying rebates, commissions or unearned discounts;

(2) Giving away or selling below the true cost (which includes all direct and indirect costs incurred to the point of sale plus a reasonable margin of mark-up for the seller) any of the affected commodities or of any other commodity or product thereof;

(3) Unfairly extending privileges or benefits (pertaining to price, to credit, to the loan, lease or giving away of facilities, equipment or other property or to any other matter or thing) to any customer, supplier or other person;

(4) Discriminating between customers, or suppliers of like class;

(5) Using the affected or any other commodity or product thereof as a loss leader or using any other device whereby for advertising, promotional, come-on or other purposes such commodity or product is sold below its fair value;

(6) Making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons. Such regulation shall not prevent any person (a) from selling below cost to liquidate excess inventory which cannot otherwise be moved, or (b) from meeting the equally low legal price of any competitor within any one trading area during any one trading period and the director may define in said marketing agreement or order said trading area and said trading period in accordance with generally accepted industry practices; but in any event the burden of proving that such selling was to meet the equally low legal price of a competitor or to liquidate said excess inventory shall be upon the person who sells below cost as above defined. Any marketing agreement or order may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices. [1961 c 256 § 34.]

**15.65.350 Agreement and order to define applicable area—"Production area"—"Marketing area".** Every marketing agreement and order shall define the area to which it applies which may be all or any contiguous portion of the state. Such area may be defined as a "production area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is produced within such production area and sold, marketed or delivered for sale or marketing. Such area may be defined as a "marketing area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is sold or marketed or delivered for sale or marketing or distribution or processing or consumption within such marketing area. [1961 c 256 § 35.]

**15.65.360 Agreement and order provisions for marketing information, services, verification of grades, standards, sampling, etc.** Any marketing agreement or order may provide for marketing information and services to producers and for the verification of grades, standards, weights, tests and sampling of quality and quantity of the agricultural product purchased by handlers from producers. [1961 c 256 § 36.]

**15.65.370 Agreement or order not to prohibit or discriminatorily burden marketing.** No marketing agreement or order or amendment thereto shall prohibit or discriminatorily burden the marketing in its area of any agricultural commodity or product thereof produced in any production area of the United States. [1961 c 256 § 37.]

**15.65.380 Additional agreement or order provisions—Rules of technical or administrative nature authorized.** Any marketing agreement or order may contain any other, further and different provisions which are incidental to and not inconsistent with this chapter and which the director finds to be needed and reasonably adapted to effectuate the declared policies of this chapter. Such provisions shall set forth the detailed application of this chapter to the affected agricultural commodity. The director or his designee shall have the power to make rules and regulations of a technical or administrative nature under this chapter and/or under any agreement or order issued pursuant to this chapter. [1961 c 256 § 38.]

**15.65.390 Annual assessment—Limitation generally—Limitation on wheat.** There is hereby levied, and the director or his designee shall collect, upon each and every affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer thereof upon each and every such unit sold or marketed or delivered for sale or marketed by him, and which shall be paid by the handler thereof upon each and every such unit purchased or received for sale, processing or distribution by him: *Provided*, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or order, and by handlers only, if only handlers are so regulated, and by both producers and handlers if both are so regulated. Such assessments shall be expressed as a stated amount of money per unit. The total amount of such annual assessment to be paid by all producers of such commodity, or by all handlers of such commodity shall not exceed four percent of the total market value of all affected units sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies. However, the total amount of such annual assessment upon producers, or handlers, or both producers and handlers, of the below listed commodities shall not exceed the amounts per unit or the percentage of selling price stated after the names of the respective commodities below:

(1) Wheat, maximum, one-quarter cent per bushel. [1961 c 256 § 39.]

**15.65.400 Per unit rate of assessment.** In every marketing agreement and order the director shall prescribe the per unit rate of such assessment, and such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. Such rate may be altered or amended from time to time, but only upon compliance with the procedural requirements of this chapter. In every such marketing agreement, order and amendment the director shall base his determination of such rate upon the volume and price of sales of affected units (or units which would have been affected units had the agreement or order been in effect) during a period which the director determines to be a representative period. The per unit rate of assessment prescribed in any such agreement, order or amendment shall for

all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate. [1961 c 256 § 40.]

**15.65.410 Time, place, method for payment and collection of assessments.** The director shall prescribe in each marketing order and agreement the time, place and method for payment and collection of assessments under such order or agreement upon any uniform basis applicable alike to all producers subject to such assessment, and upon the same or any other uniform basis applicable alike to all handlers subject to such assessment. For such purpose the director may, by the terms of the marketing order or agreement, either:

(1) Require stamps to be purchased from him or his designee and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon); or

(2) Require handlers to collect producer assessments from producers whose production they handle and remit the same to the director or his designee; or

(3) Require the person subject to the assessment to give adequate assurance or security for its payment.

Unless the director has otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, carried, shipped, sold, marketed or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. [1961 c 256 § 41.]

**15.65.420 Use of moneys collected—Departmental expenses.** Moneys collected by the director or his designee pursuant to any marketing order or agreement from any assessment or as an advance deposit thereon, shall be used by the director or his designee only for the purpose of paying for expenses and costs arising in connection with the formulation, issuance, administration and enforcement of such order or agreement and carrying out its provisions together with a proportionate share of the overhead expenses of the department attributable to its performance of its duties under this chapter with respect to such marketing order or agreement. [1961 c 256 § 42.]

**15.65.430 Refunds of moneys received or collected.** Any moneys collected or received by the director or his designee pursuant to the provisions of any marketing agreement or order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the director determines to be reasonably adapted to effectuate the declared policies of this chapter and the purposes of such marketing agreement or



order, to all persons from whom such moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the director or his designee finds that the same will tend to effectuate such policies and purposes. Upon the termination of any marketing agreement or order, any and all moneys remaining, and not required to defray the expenses or repay the obligations incurred and undertaken pursuant to such agreement or order, shall be returned by the director upon a pro rata basis to all persons from whom such moneys were collected or received. However, if the director finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the director may use such moneys to defray expenses incurred by him in the formulation, issuance, administration or enforcement of any subsequent marketing agreement or order for such commodity. Thereafter, if there are any such moneys remaining which have not been used by the director as hereinabove provided, the same shall be withdrawn from the approved depository and paid into the state treasury as unclaimed trust moneys. [1961 c 256 § 43.]

**15.65.440 Assessments personal debt—Additional percentage if not paid—Civil action to collect.** Any due and payable assessment herein levied in such specified amount as may be determined by the director or his designee pursuant to the provisions of this chapter and such agreement or order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the director or his designee when payment is called for by him. In the event any person fails to pay the director or his designee the full amount of such assessment or such other sum on or before the date due, the director or his designee may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the director or his designee may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1961 c 256 § 44.]

**15.65.450 Deposit to defray expenses of preparing and effectuating agreement or order—Reimbursement.** Prior to the issuance of any marketing agreement or order, the director may require the applicants therefor to deposit with him such amount of money as the director may deem necessary to defray the expenses of preparing and making effective such agreement or order. The director or his designee may reimburse the applicant from any moneys received by him under such agreement or order for any moneys so deposited by such applicant and/or for any necessary expenses incurred by such applicant in preparing and obtaining approval of such marketing agreement or order upon receipt of a

verified statement of such expense approved by the director or his designee. [1961 c 256 § 45.]

**15.65.460 Marketing act revolving fund—Composition.** There shall be a fund known as the "marketing act revolving fund" which shall consist of all assessments, fees, penalties, forfeitures and all other moneys, income or revenue received or collected pursuant to the provisions of this chapter and of all marketing orders and agreements issued pursuant to this chapter. None of the provisions of RCW 43.01.050 shall be applicable to such fund nor to any of the moneys so received or collected. [1961 c 256 § 46.]

**15.65.470 Depositories for revolving fund—Security—Daily deposits.** The marketing act revolving fund shall be deposited in such banks and financial institutions as the director or his designee may select throughout the state which shall give to the director or his designee surety bonds executed by surety companies authorized to do business in the state, or collateral eligible as security for deposit of state funds, in at least the full amount of the deposit in each such bank or financial institution. All moneys received by the director or his designee or by any administrator, board or employee, except an amount of petty cash for each day's needs as fixed by the regulations, shall be deposited each day, and as often during the day as advisable, in the authorized depository. [1961 c 256 § 47.]

**15.65.480 Separate accounts for each agreement or order—Disbursements.** The director and each of his designees shall deposit or cause to be deposited all moneys which are collected or otherwise received by them pursuant to the provisions of this chapter in a separate account or accounts separately allocated to each marketing order or agreement under which such moneys are collected or received, and such deposits and accounts shall be in the name of and withdrawable by the check or draft of the administrator or board or designated employee thereof established by such order or agreement. All expenses and disbursements incurred and made pursuant to the provisions of any marketing agreement or order, including a pro rata share of the administrative expenses of the department of agriculture incurred in the general administration of this chapter and all orders and agreements issued pursuant thereto, shall be paid from, and only from, moneys collected and received pursuant to such order or agreement and all moneys deposited for the account of any order or agreement in the marketing act revolving fund shall be paid from said account of such fund by check, draft or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the director or his designee. [1961 c 256 § 48.]

**15.65.490 Records of financial transactions to be kept by director—Audits—Financial statements—Delivery of audit, financial statements to governor.** The director and each of his designees shall keep or cause to be kept separately for each agreement and order in accordance with accepted standards of good accounting



practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to such order or agreement, and the same shall be audited at least annually subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts maintained under every such agreement and order shall be closed as of the last day of each fiscal year of the state of Washington. A copy of every such audit shall be delivered within thirty days after the completion thereof to the governor and the commodity board of the agreement or order concerned. The department of agriculture shall make at least annually a composite financial statement showing the financial position under all such orders and agreements as of the last day of the fiscal year of the state of Washington and a copy of such composite financial statement shall be delivered within thirty days after completion thereof to the governor. [1973 c 106 § 10; 1961 c 256 § 49.]

**15.65.500 Bonds of administrator, board, employee.**

The director or his designee shall require that a bond be given by every administrator, administrative board and/or employee occupying a position of trust under any marketing agreement or order, in such amount as the director or his designee shall deem necessary, the premium for which bond or bonds shall be paid from assessments collected pursuant to such order or agreement: *Provided*, That such bond need not be given with respect to any person covered by any blanket bond covering officials or employees of the state of Washington. [1961 c 256 § 50.]

**15.65.510 Informational reports required—Examinations, hearings to obtain—Confidentiality and disclosures.** All parties to any marketing agreement and all producers, handlers and other persons subject to any marketing order shall severally from time to time, upon the request of the director or his designee, furnish him with such information as he finds to be necessary to enable him to effectuate the declared policies of this chapter and the purposes of such agreement or order or to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemption from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director or his designee. For the purpose of ascertaining the correctness of any report made to the director or his designee pursuant to this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the director or his designee is hereby authorized to examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he deems relevant and which are within the control:

(1) Of any such party to such marketing agreement or any such producer or handler under such marketing order from whom such report was requested, or

(2) Of any person having, either directly or indirectly, actual or legal control of or over such party, producer or handler of such records, or

(3) Of any subsidiary of any such party, producer, handler or person.

To carry out the purposes of this section the director or his designee upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind. RCW 15.65.080, 15.65.090, 15.65.100 and 15.65.110, together with such other regulations consistent therewith as the director may from time to time prescribe, shall apply with respect to any such hearing. All information furnished to or acquired by the director or his designee pursuant to this section shall be kept confidential by all officers and employees of the director and/or his designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by him or them, and then only in a suit or administrative hearing brought at the direction or upon the request of the director or to which he or his designee or any officer of the state of Washington is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired.

Nothing in this section shall prohibit:

(1) The issuance of general statements based upon the reports of a number of persons subject to any marketing agreement or order, which statements do not identify the information furnished by any person, or

(2) The publication by the director or his designee of the name of any person violating any marketing agreement or order, together with a statement of the particular provisions and the manner of the violation of the marketing agreement or order so violated by such person. [1961 c 256 § 51.]

**15.65.520 Criminal acts and penalties.** It shall be a misdemeanor:

(1) For any person to violate any provision of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter.

(2) For any person to wilfully render or furnish a false or fraudulent report, statement or record required by the director pursuant to the provisions of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter or to wilfully fail or refuse to furnish or render any such report, statement or record so required.

(3) For any person engaged in the wholesale or retail trade to fail or refuse to furnish to the director or his designee or his duly authorized agents, upon request, information concerning the name and address of the person from whom he has received an agricultural commodity regulated by a marketing agreement or order in effect and issued pursuant to the terms of this

chapter and the grade, standard, quality or quantity of and the price paid for such commodity so received.

Every person convicted of any such misdemeanor shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment. Each violation during any day shall constitute a separate offense: *Provided*, That if the court finds that a petition pursuant to RCW 15.65.570 was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under clause (1) of this section for such violations as occurred between the date upon which the defendant's petition was filed with the director and the date upon which notice of the director's decision thereon was given to the defendant in accordance with RCW 15.65.570 and regulations prescribed pursuant thereto. [1961 c 256 § 52.]

**15.65.530 Civil liability—Use of moneys recovered.**

Any person who violates any provisions of this chapter or any marketing agreement or order duly issued and in effect pursuant to this chapter or who violates any rule or regulation issued by the director and/or his designee pursuant to the provisions of this chapter or of any marketing agreement or order duly issued by the director and in effect pursuant to this chapter, shall be liable civilly for a penalty in an amount not to exceed the sum of five hundred dollars for each and every violation thereof. Any moneys recovered pursuant to this paragraph shall be allocated to and used for the purposes of the agreement or order concerned. [1961 c 256 § 53.]

**15.65.540 Jurisdiction of superior courts—Who may bring action.** The several superior courts of the state of Washington are hereby vested with jurisdiction:

(1) Specifically to enforce this chapter and the provisions of each and every marketing agreement and order issued pursuant to this chapter and each and every term, condition and provision thereof;

(2) To prevent, restrain and enjoin pending litigation and thereafter permanently any person from violating this chapter or the provisions of any such agreement or order and each and every term, condition and provision thereof, regardless of the existence of any other remedy at law.

(3) To require pending litigation and thereafter permanently by mandatory injunction each and every person subject to the provisions of any such agreement or order to carry out and perform the provisions of this chapter and each and every duty imposed upon him by such marketing agreement or order.

The director or any administrator or board under any marketing agreement or order, in the name of the state of Washington, or any person affected or regulated by or subject to any marketing order or agreement issued pursuant to this chapter upon joining the director as a party may bring or cause to be brought actions or proceedings for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by this chapter or by any marketing

agreement or order issued pursuant to this chapter and said courts shall have jurisdiction of such cause and shall grant such relief upon proof of such violation or threatened violation or refusal. [1961 c 256 § 54.]

**15.65.550 Duty of attorney general and prosecuting attorneys—Investigation and hearing by director.**

Upon the request of the director or his designee, it shall be the duty of the attorney general of the state of Washington and of the several prosecuting attorneys in their respective counties to institute proceedings to enforce the remedies and to collect the moneys provided for or pursuant to this chapter. Whenever the director and/or his designee has reason to believe that any person has violated or is violating the provisions of any marketing agreement or order issued pursuant to this chapter, the director and/or his designee shall have and is hereby granted the power to institute an investigation and, after due notice to such person, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the attorney general or to the appropriate prosecuting attorney for appropriate action. The provisions contained in RCW 15.65.080, 15.65.090, 15.65.100 and 15.65.110 shall apply with respect to such hearings. [1961 c 256 § 55.]

**15.65.560 Remedies additional.** The remedies provided for in this chapter shall be in addition to, and not exclusive of, any other remedies or penalties provided for in this chapter or now or hereafter existing at law or in equity, and such remedies shall be concurrent and alternative and neither singly nor combined shall the same be exclusive. [1961 c 256 § 56.]

**15.65.570 Proceedings subject to administrative procedure act.**

All proceedings held by the director for the promulgation of any marketing agreement or order and the amendment, modification, or dissolution thereof and all proceedings concerning the promulgation of any rules or regulations or the amendment or modification thereof and appeals therefrom shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended. [1961 c 256 § 57.]

**15.65.580 Director may issue agreement or order similar to license or order issued by United States—Administrator, board.**

In the event the director finds that it tends to effectuate the declared purposes of this chapter within the standards prescribed in this chapter, the director may issue a marketing agreement or order, applicable to the marketing, within the state of Washington of any agricultural commodity, containing like terms, provisions, methods and procedures as any license or order regulating the marketing of such commodity in interstate or foreign commerce, issued by the secretary of agriculture of the United States pursuant to the provisions of any law or laws of the United States. In selecting an administrator or the members of any board or other agency under such marketing order, the director may utilize the same persons as those serving in a similar capacity under such federal license or order,

so as to avoid duplicating or conflicting personnel: *Provided*, That any administrator, board or agency so appointed by the director shall be responsible to the director for the performance of such of their duties as relate to the administration of any such marketing agreement or order issued by the director hereunder. [1961 c 256 § 58.]

**15.65.590 Cooperation, joint agreements or orders with other states and United States to achieve uniformity.** The director and his designee are hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders, and the director is authorized to conduct joint hearings, issue joint or concurrent marketing agreements or orders, for the purposes and within the standards set forth in this chapter, and may exercise any administrative authority prescribed by this chapter to effect such uniformity of administration and regulation. [1961 c 256 § 59.]

**15.65.600 Public interest to be protected—Establishment of prices prohibited.** The director shall protect the public interest and the interest of all consumers and producers of every agricultural commodity regulated by every marketing agreement and order issued pursuant to this chapter and shall neither take nor authorize any action which shall have for its purpose the establishment or maintenance of prices. [1961 c 256 § 60.]

**15.65.610 Orders, rules of Washington utilities and transportation commission and interstate commerce commission not affected.** Nothing in this chapter contained shall apply to any order, rule or regulation issued or issuable by the Washington utilities and transportation commission or the interstate commerce commission with respect to the operation of common carriers. [1961 c 256 § 61.]

**15.65.620 Chapter not to affect other laws—Agreements and orders under prior law may be made subject to chapter.** Nothing in this chapter shall apply to nor alter nor change any provision of the statutes of the state of Washington relating to the apple advertising commission (RCW 15.24.010–.210 inclusive), to the soft tree fruits commission (RCW 15.28.010–.310 inclusive), or to dairy products commission (RCW 15.44.010–.180 inclusive), or to wheat commission (RCW 15.63.010–.920 inclusive). No marketing agreement or order containing any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be issued with respect to the respective commodities affected by said statutes unless and until any commission established by any such statute shall cease to perform the provisions of its respective statute. The provisions of this chapter shall have no application to any marketing agreement or order issued pursuant to the Washington agricultural enabling act of 1955 (chapter 15.66); except that any such marketing agreement or order issued pursuant to said 1955 act may be brought under this chapter upon compliance with the

provisions of this chapter relating to amendments of marketing agreements and orders, whereupon:

(1) The provisions of this chapter shall apply to and the provisions of said 1955 act shall cease to apply to such marketing agreement or order; and

(2) All assets and liabilities of, or pertaining to such agreement or order, and of any commission or agency established by it, shall continue to exist with respect to such agreement, order, commission or agency after being so brought under this chapter. [1961 c 256 § 62.]

**15.65.630 Application of chapter to canners, freezers, pressers, dehydrators of fruit or vegetables.** Except for the provisions of RCW 15.65.410, nothing in this chapter shall apply to any person engaged in the canning, freezing, pressing, or dehydrating of fresh fruit or vegetables. [1961 c 256 § 63.]

**15.65.640 Chapter not to apply to green pea grower or processor.** Nothing in this chapter shall apply to any person engaged in growing of or processing green peas. [1961 c 256 § 64.]

**15.65.900 Saving—1961 c 256.** This chapter shall not repeal, amend or modify chapter 15.66 RCW, or any other law providing for the marketing of agricultural commodities and/or providing for marketing agreements or orders for such agricultural commodities, which shall be in existence on the date this act becomes effective. [1961 c 256 § 65.]

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

**15.65.910 Severability—1961 c 256.** If any section, sentence, clause or part of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, sentence, clause and part thereof despite the fact that one or more sections, clauses or parts thereof be declared unconstitutional. [1961 c 256 § 66.]

## Chapter 15.66

### WASHINGTON AGRICULTURAL ENABLING ACT OF 1955

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- 15.66.900 Short title.

*Agricultural processing and marketing associations: Chapter 24.34 RCW.*

*Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 30.04.370.*

**15.66.010 Definitions.** For the purposes of this chapter:

(1) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him concerning some matter under this chapter.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Marketing order" means an order issued by the director pursuant to this chapter.

(4) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product within its natural or processed state, including bees and honey but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity.

(6) "Affected producer" means any producer of an affected commodity.

(7) "Affected commodity" means any agricultural commodity for which the director has established a list of producers pursuant to RCW 15.66.060.

(8) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this chapter under a particular marketing order concerning an affected commodity.

(9) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(10) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles

15, 16 and 69 RCW and chapters 9.16, 19.24, 19.77, 19.80, 19.84, 19.89, 19.90, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(11) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(12) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(13) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product. [1961 c 11 § 15.66.010. Prior: 1955 c 191 § 1.]

**15.66.020 Declaration of purpose.** The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of this chapter to promote the general welfare of the state by enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient and unhampered marketing, grading and standardizing of the commodities they produce, and in promoting and increasing the sale of such commodities. [1961 c 11 § 15.66.020. Prior: 1955 c 191 § 2.]

**15.66.030 Marketing orders authorized.** Marketing orders may be made for any one or more of the following purposes:

(1) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets or to create new or larger markets for any agricultural commodity grown in the state of Washington;

(2) To provide for carrying on research studies to find more efficient methods of production, processing, handling and marketing of any agricultural commodity;

(3) To provide for improving standards and grades by defining, establishing and providing labeling requirements with respect to the same;

(4) To investigate and take necessary action to prevent unfair trade practices. [1961 c 11 § 15.66.030. Prior: 1955 c 191 § 3.]

**15.66.040 Prerequisites to marketing orders—Director's duties.** Marketing orders and orders modifying or terminating existing marketing orders shall be promulgated by the director only after the director has done the following:

- (1) Received a petition as provided for in RCW 15.66.050;
- (2) Given notice of hearing as provided for in RCW 15.66.060;
- (3) Conducted a hearing as provided for in RCW 15.66.070;
- (4) Made findings and decision as provided for in RCW 15.66.080;
- (5) Determined assent of affected producers as provided for in RCW 15.66.090. [1961 c 11 § 15.66.040. Prior: 1955 c 191 § 4.]

**15.66.050 Petition for marketing order—Fee.** Petitions for issuance, amendment or termination of a marketing order shall be signed by not less than five percent or one hundred of the producers alleged to be affected, whichever is less, and shall be filed with the director. Such petition shall be accompanied by a filing fee of one hundred dollars payable to the state treasurer; and shall designate some person as attorney-in-fact for the purpose of this section. Upon receipt of such a petition, the director shall prepare a budget estimate for handling such petition which shall include the cost of the preparation of the estimate, the cost of the hearings and the cost of the proposed referendum. The petitioners, within thirty days after receipt of the budget estimate by their attorney-in-fact shall remit to the director the difference between the filing fee of one hundred dollars already paid and the total budget estimate. If the petitioners fail to remit the difference, or if for any other reason the proceedings for the issuance, amendment or termination of the marketing order are discontinued, the filing fee, including any additional amount paid in accordance with such budget estimates shall not be refunded. If the petition results, after proper proceedings, in the issuance, amendment, or termination of a marketing order, said petitioners shall be reimbursed for the amount paid for said total filing fee out of funds of the commodity commission as they become available. [1961 c 11 § 15.66.050. Prior: 1955 c 191 § 5.]

**15.66.060 Lists of affected producers—Notice—Hearing notice.** Upon receipt of a petition for the issuance, amendment, or termination of a marketing order, the director shall establish a list of producers of the agricultural commodity affected or make any such existing list current. In establishing or making current such a list of producers, the director shall publish a notice to producers of the commodity to be affected requiring them to file with the director a certified report showing the producer's name, mailing address, and the yearly average quantity of the affected commodity produced by him in the five years preceding the date of the notice or in such lesser time as the producer has produced the commodity in question. The notice shall be published

once a week for four consecutive weeks in such newspaper or newspapers, including a newspaper or newspapers of general circulation within the affected areas, as the director may prescribe, and shall be mailed to all affected producers on record with the director. All reports shall be filed with the director within twenty days from the last date of publication of the notice or within thirty days after the mailing of the notice to affected producers, whichever is the later. The director shall keep such lists at all times as current as possible and may require information from affected producers at various times in accordance with rules and regulations prescribed by the director: *Provided*, That any commission established under the provisions of this chapter may at its discretion prior to any election for members of such commission carry out the above stated mandate to the director for establishing a list of producers, and supply the director with a current list of all producers subject to the provisions of the marketing order under which it was formed.

Such producer list shall be final and conclusive in making determinations relative to the assent by producers upon the issuance, amendment or termination of a marketing order and in elections under the provisions of this chapter.

The director shall then notify affected producers, so listed, by mail that the public hearing affording opportunity for them to be heard upon the proposed issuance, amendment, or termination of the marketing order will be heard at the time and place stated in the notice. Such notice of the hearing shall be given not less than ten days nor more than sixty days prior to the hearing. [1969 c 66 § 1; 1961 c 11 § 15.66.060. Prior: 1955 c 191 § 6.]

**15.66.070 Public hearing.** At the public hearing the director shall receive evidence and testimony offered in support of, or opposition to, the proposed issuance of, amendment to, or termination of a marketing order and concerning the terms, conditions, scope, and area thereof. Such hearing shall be public and all testimony shall be received under oath. A full and complete record of all proceedings at such hearings shall be made and maintained on file in the office of the director, which file shall be open to public inspection. The director shall base his findings upon the testimony and evidence received at the hearing, together with any other relevant facts available to him from official publications of institutions of recognized standing. The director shall describe in his findings such official publications upon which any finding is based.

For such hearings and for any other hearings under this chapter, the director shall have the power to subpoena witnesses and to issue subpoenas for the production of any books, records or documents of any kind.

The superior court of the county in which any hearing or proceeding may be had may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. The director, in case of the refusal of any witness to attest or testify or produce any

papers required by the subpoena, shall report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice has been given of the time and place of attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that he has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in the subpoena, or has refused to answer questions propounded to him in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel a witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued, it shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be dealt with as for contempt of court. [1961 c 11 § 15.66.070. Prior: 1955 c 191 § 7.]

**15.66.080 Findings and decision of the director.** The director shall make and publish findings upon every material point controverted at the hearing and required by this chapter and upon such other matters and things as he may deem fitting and proper. He shall also issue a recommended decision based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record. The recommended decision shall contain the text in full of any order, or amendment or termination of existing order, and may deny or approve the proposal in its entirety, or it may recommend a marketing order containing other or different terms or conditions from those contained in the proposal: *Provided*, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The director shall not approve the issuance, amendment, or termination of any marketing order unless he shall find with respect thereto:

(1) That the proposed issuance, amendment or termination thereof is reasonably calculated to attain the objective sought in such marketing order;

(2) That the proposed issuance, amendment, or termination is in conformity with the provisions of this chapter and within the applicable limitations and restrictions set forth therein will tend to effectuate the declared purposes and policies of this chapter;

(3) That the interests of consumers of such commodity are protected in that the powers of this chapter are being exercised only to the extent necessary to attain such objectives.

After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections with the director. The director

shall consider the objections and shall issue his final decision which may be the same as the recommended decision or may be revised in the light of said objections. The final decision shall set out in full the text of the order. The director shall deliver or mail copies of the final decision to the same parties to whom copies of the findings and recommended decision are required to be sent. If the final decision denies the proposal in its entirety, no further action shall be taken by the director. [1961 c 11 § 15.66.080. Prior: 1955 c 191 § 8.]

**15.66.090 Determined assent of affected producers.** After the issuance by the director of the final decision approving the issuance, amendment, or termination of a marketing order, the director shall determine by a referendum whether the affected producers assent to the proposed action or not. The director shall conduct the referendum among the affected producers based on the list as provided for in RCW 15.66.060, and the affected producers shall be deemed to have assented to the proposed order if fifty-one percent or more by number reply to the referendum within the time specified by the director, and if, of those replying, sixty-five percent or more by number and fifty-one percent or more by volume assent to the proposed order. The determination by volume shall be made on the basis of volume as determined in the list of affected producers created under provisions of RCW 15.66.060, subject to rules and regulations of the director for such determination. The director shall consider the approval or disapproval of any cooperative marketing association authorized by its producer members to act for them in any such referendum, as being the approval or disapproval of the producers who are members of or stockholders in or under contract with such association of cooperative producers: *Provided*, That the association shall first determine that a majority of the membership of the association authorize its action concerning the specific marketing order. If the requisite assent is given, the director shall promulgate the order and shall mail notices of the same to all affected producers. [1961 c 11 § 15.66.090. Prior: 1955 c 191 § 9.]

**15.66.100 Contents of marketing order.** A marketing order shall define the area of the state to be covered by the order which may be all or any portion of the state; shall contain provisions for establishment of a commodity commission and administration and operation and powers and duties of same; shall provide for assessments as provided for in this chapter and shall contain one or more of the provisions as set forth in RCW 15.66.030. The order may provide that its provisions covering standards, grades, labels and trade practices apply with respect to the affected commodity marketed or sold within such area regardless of where produced. A marketing order may provide that one commodity commission may administer marketing orders for two or more affected commodities, if approved by a majority, as provided in this chapter for the creation of a marketing order, of the affected producers of each affected commodity concerned. [1961 c 11 § 15.66.100. Prior: 1955 c 191 § 10.]



**15.66.110 Commodity commission—Composition—Terms.** Every marketing order shall establish a commodity commission composed of not less than five nor more than thirteen members. In addition, the director shall be an ex officio member of each commodity commission. Commission members shall be citizens and residents of this state, over the age of twenty-five years. The term of office of commission members shall be three years with the terms rotating so that one-third of the terms will commence as nearly as practicable each year. However, the first commission shall be selected, one-third for a term of one year, one-third for a term of two years, and one-third for a term of three years, as nearly as practicable. Two-thirds of the commission members shall be elected by the affected producers and such elected members shall all be affected producers. The remaining one-third shall be appointed by the commission and shall be either affected producers, others active in matters relating to the affected commodity or persons not so related. [1961 c 11 § 15.66.110. Prior: 1955 c 191 § 11.]

**15.66.120 Commodity commission—Nominations—Elections—Vacancies.** Not less than ninety days nor more than one hundred and five days prior to the beginning of each term of each elected commission member, the director shall give notice by mail to all affected producers of the vacancy and call for nominations in accordance with this section and with the provisions of the marketing order and shall give notice of the final date for filing nominations, which shall not be less than eighty days nor more than eighty-five days before the beginning of such term. Such notice shall also advise that nominating petitions shall be signed by five persons qualified to vote for such candidates or, if the number of nominating signers is provided for in the marketing order, such number as such order provides.

Not less than sixty days nor more than seventy-five days prior to the commencement of such commission member term, the director shall submit by mail ballots to all affected producers, which ballots shall be required to be returned to the director not less than thirty days prior to the commencement of such term. Such mail ballot shall be conducted in a manner so that it shall be a secret ballot. With respect to the first commission for a particular commodity, the director may call for nominations in the notice of his decision following the hearing and the ballot may be submitted at the time the director's proposed order is submitted to the affected producers for their assent.

Said elected members may be elected from various districts within the area covered by the marketing order if the order so provides, with the number of members from each district to be in accordance with the provisions of the marketing order.

The members of the commission not elected by the affected producers shall be elected by a majority of the commission at a meeting of the commission within ninety days prior to expiration of the term but to fill nonelective vacancies caused by other reasons than the expiration of a term, the new member shall be elected

by the commission at its first meeting after the occurrence of the vacancy. [1961 c 11 § 15.66.120. Prior: 1955 c 191 § 12.]

**15.66.130 Commodity commission—Meetings—Quorum—Compensation.** Each commodity commission shall hold such regular meetings as the marketing order may prescribe or that the commission by resolution may prescribe, together with such special meetings that may be called in accordance with provisions of its resolutions upon reasonable notice to all members thereof. A majority of the members shall constitute a quorum for the transaction of all business of the commission. In the event of a vacancy in an elected or appointed position on the commission, the remaining elected members of the commission shall select a qualified person to fill the unexpired term.

No member of the commission shall receive any salary or other compensation from the commission except that each member shall receive a specified sum as provided in the marketing order not in excess of twenty dollars per day for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence and traveling expense at the rate allowed by law to state employees. [1972 ex.s. c 112 § 3; 1961 c 11 § 15.66.130. Prior: 1955 c 191 § 13.]

**15.66.140 Commodity commission—Powers and duties.** Every marketing commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

(1) To elect a chairman and such other officers as determined advisable;

(2) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by legal agencies of the state and make annual reports therefrom to the state auditor;

(8) Borrow money and incur indebtedness;



(9) Make necessary disbursements for routine operating expenses;

(10) Such other powers and duties that are necessary to carry out the purposes of this chapter. [1961 c 11 § 15.66.140. Prior: 1955 c 191 § 14.]

**15.66.145 Members may belong to association with same objectives—Contracts with associations authorized.** Any member of an agricultural commission may also be a member or officer of an association which has the same objectives for which the agricultural commission was formed. An agricultural commission may also contract with such association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 4.]

**15.66.150 Annual assessments—Rate—Collection.** There is hereby levied, and there shall be collected by each commission, upon each and every unit of any agricultural commodity specified in any marketing order an annual assessment which shall be paid by the producer thereof upon each and every such unit sold, processed, stored or delivered for sale, processing or storage by him. Such assessments shall be expressed as a stated amount of money per unit. The total amount of such annual assessment to be paid by all affected producers of such commodity shall not exceed:

(1) In the case of wheat, one-half cent per bushel;

(2) In the case of all other commodities, three percent of the total market value of all affected units sold, processed, stored or delivered for sale, processing or storage by all affected producers of such units during the year to which the assessment applies.

Every marketing order shall prescribe the per unit rate of such assessment. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited and may be altered from time to time by amendment of such order. In every such marketing order and amendment the determination of such rate shall be based upon the volume and price of sales of affected units during a period which the director determines to be a representative period. The per unit rate of assessment prescribed in any such order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such order is amended as to such rate. However, at the end of any year, any affected producer may obtain a refund from the commission of any assessment payments made which exceed three percent of the total market value of all of the affected commodity sold, processed, stored or delivered for sale, processing or storage by such producer during the year. Such refund shall be made only upon satisfactory proof given by such producer in accordance with reasonable rules and regulations prescribed by the director. Such market value shall be based upon the average sales price received by such producer during the year from all his bona fide sales or, if such producer did not sell twenty-five percent or more of all of the affected commodity produced by him during the year, such market value shall be determined by the director upon other sales of

the affected commodity determined by the director to be representative and comparable. No assessment or rate or amendment thereof shall apply in any order unless and until confirmed by a majority of affected producers participating in a vote taken in the manner by this chapter providing for the election of commission members.

To collect such assessment each order may require:

(1) Stamps to be purchased from the affected commodity commission or other authority stated in such order and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon).

(2) Payment of producer assessments before the affected units are shipped off the farm or payment of assessments at different or later times, and in such event the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(3) Every affected producer subject to assessment under such order to deposit with the commission in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the director determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed twenty-five percent of the estimated total annual assessment payable by such person. At the close of such marketing year the sums so deposited shall be adjusted to the total of such assessments payable by such person.

(4) Handlers receiving the affected commodity from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and remit the same to the affected commission. The lending agency for a commodity credit corporation loan to producers shall be deemed a handler for the purpose of this subsection. No affected units shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued, but no liability hereunder shall attach to common carriers in the regular course of their business. [1961 c 11 § 15.66.150. Prior: 1957 c 133 § 1; 1955 c 191 § 15.]

**15.66.160 Annual assessments—Disposition of revenue.** Moneys collected by any commodity commission pursuant to any marketing order from any assessment for marketing purposes or as an advance deposit thereon shall be used by the commission only for the purpose of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of such agreement or order.

Upon the termination of any marketing order any and all moneys remaining with the commodity commission operating under that marketing order and not

required to defray expenses or repay obligations incurred by that commission shall be returned to the affected producers in proportion to the assessments paid by each in the two year period preceding the date of the termination order. [1961 c 11 § 15.66.160. Prior: 1955 c 191 § 16.]

**15.66.170 Annual assessments—Payments—Civil action to enforce.** Any due and payable assessment herein levied, and every sum due under any marketing order in a specified amount shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the commission when payment is called for by the commission. In the event any person fails to pay the full amount of such assessment or such other sum on or before the date due, the commission may add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1961 c 11 § 15.66.170. Prior: 1955 c 191 § 17.]

**15.66.180 Expenditure of funds collected.** All moneys which are collected or otherwise received pursuant to each marketing order created under this chapter shall be used solely by and for the commodity commission concerned and shall not be used for any other commission nor the department. Such moneys shall be deposited in a separate account or accounts in the name of the individual commission in any bank which is a state depository. All expenses and disbursements incurred and made pursuant to the provisions of any marketing order shall be paid from moneys collected and received pursuant to such order without the necessity of a specific legislative appropriation and all moneys deposited for the account of any order shall be paid from said account by check or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the commission. None of the provisions of RCW 43.01.050 shall be applicable to any such account or any moneys so received, collected or expended. [1961 c 11 § 15.66.180. Prior: 1955 c 191 § 18.]

**15.66.190 Official bonds required.** Every administrator, employee or other person occupying a position of trust under any marketing order and every member actually handling or drawing upon funds shall give a bond in such penal amount as may be required by the affected commission or by the order, the premium for which bond or bonds shall be paid by the commission. [1961 c 11 § 15.66.190. Prior: 1955 c 191 § 19.]

**15.66.200 Petition for modification or exemption—Hearing—Appeal from ruling.** An affected producer subject to a marketing order may file a written petition with the director stating that the order, agreement or program or any part thereof is not in accordance with the law, and requesting a modification thereof or exemption therefrom. He shall thereupon be given a hearing, which hearing shall be conducted in the manner provided by RCW 15.66.070, and thereafter the director shall make his ruling which shall be final.

Appeal from any ruling of the director may be taken to the superior court of the county in which the petitioner resides or has his principal place of business, by serving upon the director a copy of the notice of appeal and complaint within twenty days from the date of entry of the ruling. Upon such application the court may proceed in accordance with RCW 7.16.010 through 7.16.140. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the director with directions to make such ruling as the court determines to be in accordance with law or to take such further proceedings as in its opinion are required by this chapter. [1961 c 11 § 15.66.200. Prior: 1955 c 191 § 20.]

**15.66.210 Unlawful acts—Penalties—Injunctions—Investigations.** It shall be a misdemeanor for:

(1) Any person wilfully to violate any provision of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter.

(2) Any person wilfully to render or furnish a false or fraudulent report, statement of record required by the director or any commission pursuant to the provisions of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter or wilfully to fail or refuse to furnish or render any such report, statement or record so required.

In the event of violation or threatened violation of any provision of this chapter or of any marketing order duly issued or entered into pursuant to this chapter, the director, the affected commission, or any affected producer on joining the affected commission, shall be entitled to an injunction to prevent further violation and to a decree of specific performance of such order, and to a temporary restraining order and injunction pending litigation upon filing a verified complaint and sufficient bond.

All persons subject to any order shall severally from time to time, upon the request of the director, furnish him with such information as he finds to be necessary to enable him to effectuate the policies of this chapter and the purposes of such order or to ascertain and determine the extent to which such order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemptions from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director. For the purpose of ascertaining the correctness of any report made to the director pursuant to this section or for the purpose of obtaining the information required in any such report

where it has been requested and has not been furnished, the director is authorized to examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents or memoranda as he deems relevant and which are within the control of any such person from whom such report was requested, or of any person having, either directly or indirectly, actual or legal control of or over such person or such records, or of any subsidiary of any such person. To carry out the purposes of this section the director, upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind, and RCW 15.66.070 shall apply with respect to any such hearing, together with such other regulations consistent therewith as the director may from time to time prescribe. [1961 c 11 § 15.66.210. Prior: 1955 c 191 § 21.]

**15.66.220 Compliance with chapter a defense in any action.** In any civil or criminal action or proceeding for violation of any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this chapter or a marketing order issued under this chapter, and in furtherance of the purposes and provisions of this chapter, shall be a complete defense to such action or proceeding. [1961 c 11 § 15.66.220. Prior: 1955 c 191 § 22.]

**15.66.230 Liability of commission, state, etc.** Obligations incurred by any commission and any other liabilities or claims against the commission shall be enforced only against the assets of such commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to this chapter or the assets thereof or against any member officer, employee or agent of the board in his individual capacity. The members of any such commission, including employees of such board, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of any such commission. The liability of the members of such commission shall be several and not joint and no member shall be liable for the default of any other member. [1961 c 11 § 15.66.230. Prior: 1955 c 191 § 23.]

**15.66.240 Marketing agreements.** Marketing agreements shall be created upon written application filed with the director by not less than five commercial producers of an agricultural commodity and upon approval of the director. The director shall hold a public hearing upon such application. Not less than five days prior

thereto he shall give written notice thereof to all producers whom he determines may be proper parties to such agreement and shall publish such notice at least once in a newspaper of general circulation in the affected area. The director shall approve an agreement so applied for only if he shall find:

(1) That no other agreement or order is in force for the same commodity in the same area or any part thereof;

(2) That such agreement will tend to effectuate its purpose and the declared policies of this chapter and conforms to law;

(3) That enough persons who produce a sufficient amount of the affected commodity to tend to effectuate said policies and purposes and to provide sufficient moneys to defray the necessary expenses of formulation, issuance, administration and enforcement have agreed in writing to said agreement.

Such agreement may be for any of the purposes and may contain any of the provisions that a marketing order may contain under the provisions of this chapter but no other purposes and provisions. A commodity commission created by such agreement shall in all respects have all powers and duties as a commodity commission created by a marketing order. Such agreement shall be binding upon, and only upon, persons who have signed the agreement: *Provided*, That a cooperative association may, in behalf of its members, execute any and all marketing agreements authorized hereunder, and upon so doing, such agreement so executed shall be binding upon said cooperative association and its members. Such agreements shall go into force when the director endorses his approval in writing upon the agreement and so notifies all who have signed the agreement. Additional signatories may be added at any time with the approval of the director. Every agreement shall remain in force and be binding upon all persons so agreeing for the period specified in such agreement but the agreement shall provide a time at least once in every twelve months when any or all such persons may withdraw upon giving notice as provided in the agreement. Such an agreement may be amended or terminated in the same manner as herein provided for its creation and may also be terminated whenever after the withdrawal of any signatory the director finds on the basis of evidence presented at such hearing that not enough persons remain signatory to such agreement to effectuate the purposes of the agreement or the policies of the act or to provide sufficient moneys to defray necessary expenses. However, in the event that a cooperative association is signatory to the marketing agreement in behalf of its members, the action of the cooperative association shall be considered the action of its members for the purpose of determining withdrawal or termination. [1961 c 11 § 15.66.240. Prior: 1955 c 191 § 24.]

**15.66.250 Price fixing and product limiting prohibited.** Nothing contained in this chapter shall permit fixing of prices not otherwise permitted by law or any limitation on production and no marketing order or agreement or any rule or regulation thereunder shall

contain any such provisions. [1961 c 11 § 15.66.250. Prior: 1955 c 191 § 25.]

**15.66.260 Administrative expenses.** All general administrative expenses of the director in carrying out the provisions of this chapter shall be borne by the state: *Provided*, That the department shall be reimbursed for actual costs incurred in conducting nominations and elections for members of any commodity board established under the provisions of this chapter. Such reimbursement shall be made from the funds of the commission for which the nominations and elections were conducted by the director. [1969 c 66 § 2; 1961 c 11 § 15.66.260. Prior: 1955 c 191 § 26.]

**15.66.270 Exemptions.** Nothing in this chapter contained shall apply to:

(1) Any order, rule, or regulation issued or issuable by the Washington utilities and transportation commission or the interstate commerce commission with respect to the operation of common carriers;

(2) Any provision of the statutes of the state of Washington relating to the apple advertising commission (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW) or to the dairy products commission (chapter 15.44 RCW). No marketing agreement or order shall be issued with respect to apples, soft tree fruits or dairy products for the purposes specified in RCW 15.66.030(1) or 15.66.030(2). [1961 c 11 § 15.66.270. Prior: 1955 c 191 § 27.]

**15.66.275 Applicability of chapter to state agencies or other governmental units.** The provisions of this chapter and any marketing order established thereunder shall be applicable to any state agency or other governmental unit engaged in the production for sale of any agricultural commodity subject to such marketing order, especially those relating to RCW 15.66.150 concerning assessments. Such assessments shall be paid by the state agency or governmental agency made subject to the marketing order from the proceeds derived from the sale of said agricultural commodities. [1967 ex.s. c 55 § 1.]

**15.66.280 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commissions.** The restrictive provisions of chapter 43.78 RCW as now or hereafter amended shall not apply to promotional printing and literature for any commission formed under this chapter. [1972 ex.s. c 112 § 5.]

**15.66.900 Short title.** This chapter shall be known and may be cited as the "Washington Agricultural Enabling Act." [1961 c 11 § 15.66.900. Prior: 1955 c 191 § 29.]

## Chapter 15.67 AGRICULTURAL CONSERVATION PLANS— 1953 ACT

### Sections

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**15.67.010 Soil conservation and domestic allotment act—Designation of agency to administer state plan.** To carry out the provisions of the soil conservation and domestic allotment act enacted by the congress of the United States, the governor may designate any existing agency of the state to administer any state plan authorized by said act which may be approved by the secretary of agriculture of the United States, hereinafter referred to as the "secretary." [1961 c 11 § 15.67.010. Prior: 1953 c 153 § 1. Formerly RCW 15.68.160.]

*Soil and water conservation: Chapter 89.08 RCW.*

*Soil conservation and domestic allotment act: Public Law No. 46, 74th Cong. 1st sess.; 49 Stats p 163, and amendments; 16 USCA § 590 g-q.*

**15.67.020 State plan—Formulation and submission—Purposes—Required provisions.** The agency designated by the governor may formulate and submit to the secretary in conformity with the provisions of said soil conservation and domestic allotment act a state plan for each calendar year beginning with the year 1954. It shall be the purpose of each such plan to promote the utilization of land and farming practices which the designated agency finds will tend, in conjunction with the operation of other plans which may be approved for other states by the secretary, to diminish the wasteful and unscientific use of natural resources, to preserve and improve soil fertility, to promote the economic use of land, and to re-establish and maintain the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms as defined in subsection (a) of section 7 of said act. Each such plan shall provide for adjustments in the utilization of land and in farming practices, through agreements with producers or through other voluntary methods, and for inducement payments in connection therewith, and also for methods of administration, and for such reports as the secretary finds necessary for the effective administration of the plan and for ascertaining whether the plan is being carried out according to its terms. [1961 c 11 § 15.67.020. Prior: 1953 c 153 § 2. Formerly RCW 15.68.170.]

**15.67.030 Federal grants-in-aid—Acceptance, uses.** Upon the acceptance of each such plan by the secretary, the agency designated by the governor, may accept all grants of money made available by the United States for the purpose of enabling the state to carry out the provisions of such plan, and all such funds shall

be made available to the designated agency for expenditures necessary in carrying out the plan, including administrative expenses, expenditures in connection with educational programs in aid of the program, and inducement payments. [1961 c 11 § 15.67.030. Prior: 1953 c 153 § 3. Formerly RCW 15.68.180.]

**15.67.040 Agricultural contingent receipts fund.** There is hereby created a fund to be known as the "Agricultural Contingent Receipts Fund" into which shall be paid all moneys received from the federal government to carry out the provisions of the act. None of the provisions of RCW 43.01.050 shall be applicable to the agricultural contingent receipts fund, nor to any of the moneys so received and collected. [1961 c 11 § 15.67.040. Prior: 1953 c 153 § 4. Formerly RCW 15.68.190.]

**15.67.050 Employment of agents—Establishment of subordinate agencies—Purposes.** To carry out the provisions of each plan approved by the secretary the agency designated by the governor may employ agents or agencies and establish such agencies as found necessary;

(1) to cooperate with local and state agencies and with agencies of other states and of the federal government;

(2) to conduct research and educational activities in connection with the formulation and operation of each plan;

(3) to enter into agreements with producers, and to provide by other voluntary methods for adjustments in the utilization of land and in farming practices, and for payments in connection therewith in amounts which the designated agency finds to be fair and reasonable. [1961 c 11 § 15.67.050. Prior: 1953 c 153 § 5. Formerly RCW 15.68.200.]

**15.67.060 Delegation of powers.** For the purpose of carrying out each such plan according to its terms, the designated agency is authorized to delegate any of the powers herein conferred to such agents or agencies as it may designate which are approved by the secretary. [1961 c 11 § 15.67.060. Prior: 1953 c 153 § 6. Formerly RCW 15.68.210.]

**15.67.070 Annual report.** The designated agency shall render for each year an annual report to the governor, who shall transmit a copy thereof to each house of the legislature, governing the administration of such plan or plans and all operations thereof, including also the expenditures of funds, and each such report shall be printed as a public document promptly upon its transmittal to the governor. [1961 c 11 § 15.67.070. Prior: 1953 c 153 § 7. Formerly RCW 15.68.220.]

**Chapter 15.68**

**AGRICULTURAL CONSERVATION PLANS—  
1937 ACT**

Sections

- 15.68.010 Acceptance of federal act—Limitations on powers.
- 15.68.020 Washington State University named sole state agent.

- 15.68.030 Duty to formulate state plans annually.
- 15.68.040 Plan contents—Voluntary organization participation—Education.
- 15.68.050 Plan contents—Acreage utilization—Agreements.
- 15.68.060 Plan contents—Expenditure estimates—Federal aid.
- 15.68.070 Use of funds by university—Limitations.
- 15.68.080 Administration expenses.
- 15.68.090 Separate system of accounts by university.
- 15.68.100 Services of other state agencies.
- 15.68.110 Administrative rules—Employees—Duties—Compensation.
- 15.68.120 Districts—Communities—Revising boundaries.
- 15.68.130 Community and district committees.
- 15.68.140 Farmer advisory board—Member election and qualifications.
- 15.68.150 Reports by university—Investigations.
- 15.68.900 Short title.

*Soil and water conservation: Chapter 89.08 RCW.*

**15.68.010 Acceptance of federal act—Limitations on powers.** The state hereby assents to and accepts the provisions of the act of the seventy-fourth congress entitled "Soil Conservation and Domestic Allotment Act," and adopts the policy and purpose of cooperating with the government and agencies of other states and territories and of the United States in the accomplishment of the policy and purposes specified in section seven of said act, subject to the following limitations:

(1) The powers conferred in this chapter shall be used to assist voluntary action calculated to effectuate such purposes; and

(2) In carrying out the purposes of this chapter due regard shall be given to the maintenance of a continuous and stable national supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers;

(3) Such powers shall not be used to discourage the production of supplies of food sufficient, when taken together with the production thereof in other states and territories of the United States, to maintain normal domestic human consumption, as determined by the secretary of agriculture of the United States from records of consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, the quantities of commodities forced into domestic consumption by decline in exports of particular commodities and the quantities of substitutes available for domestic consumption within any general class of food commodities. [1961 c 11 § 15.68.010. Prior: 1937 c 175 § 2; RRS § 3040-2.]

*Soil conservation and domestic allotment act: Public Law No. 46, 74th Cong. 1st sess.; 49 Stats p 163, and amendments; 16 USCA § 590 g-q.*

**15.68.020 Washington State University named sole state agent.** Washington State University, through the agricultural extension service, is hereby designated as the state agency to carry out the policy and purposes of this chapter and to formulate and administer state plans pursuant to the terms hereof.

The university shall perform its duties and functions as such agency separately and distinctly from the performance of its duties and functions under any other law or in any other capacity, except that it may utilize

the service and the assistance of its personnel and facilities normally used in the performance of such other functions if it finds that the utilization of such services and assistance is necessary to, or is calculated to assist substantially in, the effective administration of this chapter and that such facilities may be utilized without interference with the effective performance of such other duties and functions. [1961 c 11 § 15.68.020. Prior: 1937 c 175 § 4; RRS § 3040-4.]

**15.68.030 Duty to formulate state plans annually.** The university shall formulate for each calendar year and submit to the secretary of agriculture of the United States a state plan to carry out the purposes of this chapter. It may modify or revise any plan in any manner consistent with the provisions hereof which it finds necessary to substantially accomplish said purposes. [1961 c 11 § 15.68.030. Prior: 1937 c 175 § 5, part; RRS § 3040-5, part.]

**15.68.040 Plan contents—Voluntary organization participation—Education.** Each plan shall provide for such participation in its administration by such voluntary county and community committees, or organizations of producers organized for such purposes as the university determines is necessary or proper in such administration; and such educational programs as it determines are necessary or proper in accomplishing the purposes hereof. [1961 c 11 § 15.68.040. Prior: 1937 c 175 § 5, part; RRS § 3040-5, part.]

**15.68.050 Plan contents—Acreage utilization—Agreements.** Each plan shall provide, through agreements with agricultural producers or through other voluntary methods, for such adjustments in the utilization of land, in farming practices, and in the acreage or in the production for market, or both, of agricultural commodities as the university determines to be calculated to effectuate the purposes of this chapter as may reasonably be achieved through action of this state, and for payments to agricultural producers in connection with such agreements or methods in such amounts as the university determines to be fair and reasonable and calculated to promote such accomplishment of the purposes of this chapter without depriving such producers of a voluntary choice of action. [1961 c 11 § 15.68.050. Prior: 1937 c 175 § 5, part; RRS § 3040-5, part.]

**15.68.060 Plan contents—Expenditure estimates—Federal aid.** Each plan shall contain an estimate of expenditures necessary to carry it out, together with a statement of such amount as the university determines to be necessary to be paid by the secretary of agriculture of the United States as a grant in aid of the plan under section seven of the federal allotment act, in order to provide for the effective carrying out of the plan, and shall designate the amount and due date of each installment of such grant, the period to which the installment relates, and the amount determined by the university to be necessary for carrying out the plan during such period. [1961 c 11 § 15.68.060. Prior: 1937 c 175 § 5, part; RRS § 3040-5, part.]

**15.68.070 Use of funds by university—Limitations.** The university may receive and disburse all grants of money or other aid made available from any source to assist in carrying out the purposes of this chapter. All money or other aid, together with any money appropriated or other provision made by this state for such purpose, shall be forthwith available to the university subject to the conditions upon which the funds or other aid is received, for the purpose of administering this chapter and may be expended by the university only in carrying out the plans or in otherwise effectuating the purposes of this chapter, and no funds made available to the university for purposes other than the administration of this chapter shall be expended in connection with the administration of this chapter except in providing services and assistance in the administration of this chapter and in such case only to the extent that the funds are properly available for such purpose and subject to reimbursement of the funds so expended. [1961 c 11 § 15.68.070. Prior: 1937 c 175 § 6, part; RRS § 3040-6, part.]

**15.68.080 Administration expenses.** Subject to any conditions upon which any money or other aid is made available to the state and to the terms of any applicable plan, such expenditures may include expenditures for administrative expenses, equipment, cost of research and investigation, cost of educational activities, compensation and expenses of members of the state advisory board, reimbursement to other state agencies or to voluntary committees or associations of agricultural producers for costs to them in the administration of this chapter, requested in writing by the university and rendered to the university, reimbursement of any other fund from which it has made expenditures in providing services in the administration of this chapter, payments to agricultural producers provided for in any plan, salaries of employees, and all other expenditures requisite to carrying out the provisions of this chapter. [1961 c 11 § 15.68.080. Prior: 1937 c 175 § 6, part; RRS § 3040-6, part.]

**15.68.090 Separate system of accounts by university.** The university shall provide for the keeping of full and accurate accounts as such state agency, separate from its accounts kept in its other capacities, showing all receipts and expenditures of money, securities, or other property received, held, or expended under this chapter and shall provide for the auditing of all such accounts and for the execution of surety bonds for all employees entrusted with money or securities. [1961 c 11 § 15.68.090. Prior: 1937 c 175 § 6, part; RRS § 3040-6, part.]

**15.68.100 Services of other state agencies.** The university shall utilize such available services and assistance of other state agencies and of voluntary county and community committees and associations of agricultural producers as it determines to be necessary or calculated to assist in the effective administration of this chapter.

All other agencies of the state may assist the university in carrying out the provisions of this chapter upon

written request of the university, in any manner determined by the university to be necessary or appropriate. [1961 c 11 § 15.68.100. Prior: 1937 c 175 § 7, part; RRS § 3040-7, part.]

**15.68.110 Administrative rules—Employees—Duties—Compensation.** The university may make such rules and regulations, consistent herewith, as it determines may be necessary or proper for the administration of this chapter.

It may lease or purchase such office space, equipment, or supplies, and employ such experts and other employees as it deems necessary to carry out the provisions of this chapter, and fix the duties and compensation of such persons. [1961 c 11 § 15.68.110. Prior: 1937 c 175 § 7, part; RRS § 3040-7, part.]

**15.68.120 Districts—Communities—Revising boundaries.** The university shall divide the state into not to exceed five agricultural districts, each of which shall be composed of one county or of two or more neighboring counties. As far as practicable, the districts shall be so constituted as to contain approximately equal numbers of agricultural producers.

It shall designate within each county such geographic units, which shall be called "communities," as it determines to be the most convenient for the administration of this chapter and of agricultural plans and shall establish the boundaries of such communities.

It may revise the boundaries of the districts and the communities in conformity with the respective standards prescribed herein at such times as it is found that revision is necessary either to cause the districts or communities, or both, to conform to the standards or to provide for the more substantial or more efficient accomplishment of the purposes of this chapter. [1961 c 11 § 15.68.120. Prior: 1937 c 175 § 8; RRS § 3040-8.]

**15.68.130 Community and district committees.** The university shall by regulation provide:

(1) For the organization within each community of a voluntary association, in which all agricultural producers who are citizens of the state and residents in the communities shall be entitled to equal participation; for the selection by each association of a community committee, composed of three members of the association and for the selection of a chairman of each committee; and

(2) For the selection by the members of the committees within each county of a county committee for the county, composed of three members of the community committees and for the selection of a chairman of each county committee. [1961 c 11 § 15.68.130. Prior: 1937 c 175 § 9; RRS § 3040-9.]

**15.68.140 Farmer advisory board—Member election and qualifications.** The university shall, by regulation, provide for the selection of not to exceed five persons, resident in the state, selected for their qualifications by actual farming experience and comprehensive understanding of the agricultural problems of the state, to act as farmer members of the state advisory

board. No two residents of the same agricultural district shall be members of the advisory board at the same time.

The board, upon the request of the university shall advise the university with regard to all matters of major importance in carrying out the provisions of this chapter, and may in the absence of such request, submit advice and information to the university. [1971 ex.s. c 292 § 13; 1961 c 11 § 15.68.140. Prior: 1937 c 175 § 10; RRS § 3040-10.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**15.68.150 Reports by university—Investigations.** The university shall compile or require to be made such reports as it deems necessary or proper to ascertain whether any agricultural plans are being carried out according to their terms. The university shall provide for compliance on the part of all persons and agencies participating in the administration of any such agricultural plan, with such requirements, and may make, or cause to be made, such investigations as it deems necessary or proper to assure the correctness of and to make possible the verification of such reports. [1961 c 11 § 15.68.150. Prior: 1937 c 175 § 11; RRS § 3040-11.]

**15.68.900 Short title.** This chapter shall be known and cited as the "Washington agricultural conservation and adjustment act". [1961 c 11 § 15.68.900. Prior: 1937 c 175 § 1; RRS § 3040-1.]

## Chapter 15.69 CONSERVATION—NORTHWEST WASHINGTON NURSERY

| Sections  |   |
|-----------|---|
| 15.69.010 | Agreements for soil conservation and land use authorized. |
| 15.69.020 | Northwest nursery fund.                                   |
| 15.69.030 | Northwest nursery fund—Depositary.                        |
| 15.69.040 | Northwest nursery fund—Expenditures.                      |

**15.69.010 Agreements for soil conservation and land use authorized.** The director of agriculture is hereby authorized to enter into agreements with local, state and federal agencies, agencies of other states and associations of agricultural producers, such as, but not limited to the crop improvement association, for the growing and/or testing of plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture on such property or properties known as the northwest Washington nursery located near Bellingham, Washington. Such agreements shall provide for payment of reasonable fees to cover the cost of such growing and/or testing of plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture. [1961 c 11 § 15.69.010. Prior: 1955 c 368 § 1.]

**15.69.020 Northwest nursery fund.** There is created a fund to be known as the northwest nursery fund into which shall be paid all moneys received as payment to



cover the costs of production for growing and/or testing plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture in this state and such other money as shall be received from services rendered on such premises not otherwise provided for by law. None of the provisions of RCW 43.01.050 shall be applicable to the northwest nursery fund, nor to any of the moneys received and collected. [1961 c 11 § 15.69.020. Prior: 1955 c 368 § 2.]

**15.69.030 Northwest nursery fund—Depositary.**

The northwest nursery fund shall be deposited by the director in such banks and financial institutions as may be selected which shall give to the director surety bonds executed by surety companies authorized to do business in this state, or collateral eligible as security for deposit of state funds, in at least the full amount of the deposit in each such bank or financial institution.

All moneys received by the director or any employee, shall be deposited each day, and as often during the day as advisable, in the authorized depositary selected by the director under the terms of this section. [1961 c 11 § 15.69.030. Prior: 1955 c 368 § 3.]

**15.69.040 Northwest nursery fund—Expenditures.**

Moneys in the northwest nursery fund shall be expended by the director for defraying expenses of carrying out the agreements for the growing and/or testing of plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture and necessary expenses of operation and administration. [1961 c 11 § 15.69.040. Prior: 1955 c 368 § 4.]

**Chapter 15.70**

**RURAL REHABILITATION**

Sections

|           |  |
|-----------|--|
| 15.70.010 | Director may receive federal funds for rural rehabilitation corporation. |
| 15.70.020 | Director may delegate certain powers to secretary of agriculture.        |
| 15.70.030 | Deposit and use of funds.  |
| 15.70.040 | Powers of director—In general.   |
| 15.70.050 | No liability as to United States.  |

**15.70.010 Director may receive federal funds for rural rehabilitation corporation.** The director of the state department of agriculture is hereby designated as the state official of the state of Washington to make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of public law 499, 81st congress, approved May 3, 1950, the trust assets, either funds or property, held by the United States as trustee in behalf of the Washington rural rehabilitation corporation. [1961 c 11 § 15.70.010. Prior: 1951 c 169 § 1.]

**15.70.020 Director may delegate certain powers to secretary of agriculture.** The director of agriculture is authorized, in his discretion, to enter into agreements with the secretary of agriculture of the United States

pursuant to section 2(f) of the aforesaid act of the congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend and use in the state of Washington all or any part of such trust assets or any other funds of the state of Washington which may be appropriated for such uses for carrying out the purposes of titles I and II of the Bankhead-Jones farm tenant act, in accordance with the applicable provisions of title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements. [1961 c 11 § 15.70.020. Prior: 1951 c 169 § 2.]

**15.70.030 Deposit and use of funds.** Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under the provisions of RCW 15.70.020 shall be received by the director of agriculture and by him deposited with the treasurer of the state. Such funds are hereby appropriated and may be expended or obligated by the director of agriculture for the purposes of RCW 15.70.020 or for use by the director of agriculture for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Washington rural rehabilitation corporation as may from time to time be agreed upon by the director of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said public law 499. [1961 c 11 § 15.70.030. Prior: 1951 c 169 § 3.]

**15.70.040 Powers of director—In general.** The director of agriculture is authorized and empowered to:

(1) Collect, compromise, adjust or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract or agreement entered into or administered pursuant to this chapter and if, in his judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

(2) Bid for and purchase at any execution, foreclosure or other sale, or otherwise to acquire property upon which the director of agriculture has a lien by reason of judgment or execution, or which is pledged, mortgaged, conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by the director of agriculture under this chapter, and

(3) Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this chapter.

The authority herein contained may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to RCW 15.70.020. [1961 c 11 § 15.70.040. Prior: 1951 c 169 § 4.]

**15.70.050 No liability as to United States.** The United States and the secretary of agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the director of agriculture of the state of Washington pursuant to this chapter. [1961 c 11 § 15-70.050. Prior: 1951 c 169 § 5.]

**Chapter 15.76  
AGRICULTURAL FAIRS, YOUTH SHOWS,  
EXHIBITIONS**

Sections

- 15.76.100 Declaration of public interest—Allocation of state funds authorized.
- 15.76.110 Definitions.
- 15.76.120 Classification of fairs.
- 15.76.130 Application for state allocation—Purposes—Form.
- 15.76.140 Eligibility requirements for state allocation.
- 15.76.150 Allocation formula—Considerations.
- 15.76.160 Purposes for which allocation made—To whom made—List of premiums to be submitted as part of application, form.
- 15.76.165 Application of counties for capital improvement and maintenance assistance—Exemption of leased property from property taxation.
- 15.76.170 Fairs commission—Creation, terms, compensation, powers and duties.
- 15.76.180 Rules and regulations.

County fairs: Chapter 36.37 RCW.

County property, lease for agricultural purposes: RCW 36.34.145.

**15.76.100 Declaration of public interest—Allocation of state funds authorized.** It is hereby declared that it is in the public interest to hold agricultural fairs, including the exhibition of livestock and agricultural produce of all kinds, as well as related arts and manufactures; including products of the farm home and educational contest, displays and demonstrations designed to train youth and to promote the welfare of farm people and rural living. Fairs qualifying hereunder shall be eligible for allocations from the state fair fund as provided in this chapter. [1961 c 61 § 1.]

**15.76.110 Definitions.** "Director" shall mean the director of agriculture. "Commission" shall mean the fairs commission created by this chapter. "State allocations" shall mean allocations from the state fair fund. [1961 c 61 § 2.]

**15.76.120 Classification of fairs.** For the purposes of this chapter all agricultural fairs in the state which may become eligible for state allocations shall be divided into categories, to wit:

(1) "Area fairs"—those not under the jurisdiction of boards of county commissioners; organized to serve an area larger than one county, having both open and junior participation, and having an extensive diversification of classes, displays and exhibits;

(2) "County and district fairs"—organized to serve the interests of single counties other than those in which a recognized area fair or a district fair as defined in RCW 36.37.050, is held and which are under the direct control and supervision of the county commissioners of

the respective counties, which have both open and junior participation, but whose classes, displays and exhibits may be more restricted or limited than in the case of area or district fairs. There may be but one county fair in a single county: *Provided, however,* That the county commissioners of two or more counties may, by resolution, jointly sponsor a county fair.

(3) "Community fairs"—organized primarily to serve a smaller area than an area or county fair, which may have open or junior classes, displays, or exhibits. There may be more than one community fair in a county.

(4) "Youth shows and fairs"—approved by duly constituted agents of Washington State University and/or the Washington state board for vocational education, serving three or more counties, and having for their purpose the education and training of rural youth in matters of rural living. [1961 c 61 § 3.]

**15.76.130 Application for state allocation—Purposes—Form.** For the purpose of encouraging agricultural fairs and training rural youth, the board of trustees of any fair or youth show may apply to the director of agriculture for state allocations as hereinafter set forth. Such application shall be in such form as the director may prescribe. [1961 c 61 § 4.]

**15.76.140 Eligibility requirements for state allocation.** Before any agricultural fair may become eligible for state allocations it must have conducted two successful consecutive annual fairs immediately preceding application for such allocations, and have its application therefor approved by the director. [1965 ex.s. c 32 § 1; 1961 c 61 § 5.]

**15.76.150 Allocation formula—Considerations.** The director shall have the authority to make allocations from the state fair fund as follows: Eighty-five percent to participating agricultural fairs, distributed according to the merit of such fairs measured by a merit rating to be set up by the director. This merit rating shall take into account such factors as area and population served, open and/or youth participation, attendance, gate receipts, number and type of exhibits, premiums and prizes paid, community support, evidence of successful achievement of the aims and purposes of the fair, extent of improvements made to grounds and facilities from year to year, and overall condition and appearance of grounds and facilities. The remaining fifteen percent of money in the state fair fund may be used for special assistance to any participating fair or fairs and for administrative expenses incurred in the administration of this chapter, including expenses incurred by the commission as may be approved by the director: *Provided,* That not more than five percent of the state fair fund may be used for such expenses.

The division and payment of funds authorized in this section shall occur at such times as the director may prescribe. [1965 ex.s. c 32 § 2; 1961 c 61 § 6.]

**15.76.160 Purposes for which allocation made—To whom made—List of premiums to be submitted as part of application, form.** Any state allocations made under this chapter to fairs or youth shows, other than fairs or youth shows operated by or for and under the control of one or more counties or other agencies, as defined in subsection (4) of RCW 15.76.120, shall be made only as a reimbursement in whole or in part for the payment of premiums and prizes awarded to participants in such fairs or youth shows. State allocations to fairs under the control of one or more counties shall be made to the county treasurer of the county in which the fair is held. State allocations to other publicly sponsored fairs or youth shows shall be made to such sponsor. The board of trustees of any private fair or youth show, as part of its application for any allocation under this chapter, and as a condition of such allocation, shall submit to the director a list of premiums and prizes awarded to participants in its last preceding fair or youth show. Such list shall contain the names of all premium and prize winners, a description of each prize or premium, including its amount or value, and the total values of all such awards. The list shall be in such form and contain such further information as the director may require, and shall be verified as to its accuracy by the oath of the president of the fair or youth show, together with that of the secretary or manager, subscribed thereon. [1961 c 61 § 7.]

**15.76.165 Application of counties for capital improvement and maintenance assistance—Exemption of leased property from property taxation.** Any county which owns or leases property from another governmental agency and provides such property for area or county and district agricultural fair purposes may apply to the director for special assistance in carrying out necessary capital improvements to such property and maintenance of the appurtenances thereto, and in the event such property and capital improvements are leased to any organization conducting an agricultural fair pursuant to chapter 15.76 RCW and chapter 257 of the Laws of 1955, such leasehold and such leased property shall be exempt from real and personal property taxation. [1973 c 117 § 1; 1969 c 85 § 1.]

**15.76.170 Fairs commission—Creation, terms, compensation, powers and duties.** There is hereby created a fairs commission to consist of the director of agriculture as ex officio member and chairman, and seven members appointed by the director to be persons who are interested in fair activities; at least three of whom shall be from the east side of the Cascades and three from the west side of the Cascades and one member at large. The first appointment shall be: Three for a one year term, two for a two year term, and two for a three year term, and thereafter the appointments shall be for three year terms.

Appointed members of the commission shall receive twenty dollars per diem for each day actually spent on commission business plus actual travel expense payable on proper vouchers submitted to and approved by the director, and payable from that portion of the state fair

fund set aside for administrative costs under this chapter. The commission shall meet at the call of the chairman, but at least annually. It shall be the duty of the commission to act as an advisory committee to the director, to assist in the preparation of the merit rating used in determining allocations to be made to fairs, and to perform such other duties as may be required by the director from time to time. [1961 c 61 § 8.]

**15.76.180 Rules and regulations.** The director shall have the power to adopt such rules and regulations as may be necessary or appropriate to carry out the purposes of this chapter. [1961 c 61 § 9.]

## Chapter 15.80 WEIGHMASTERS

| Sections  |  |
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| 15.80.300 | Definitions—Application.   |
| 15.80.310 | "Department"   |
| 15.80.320 | "Director".  |
| 15.80.330 | "Person".  |
| 15.80.340 | "Licensed public weighmaster".   |
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| 15.80.360 | "Vehicle".   |
| 15.80.370 | "Certified weight".  |
| 15.80.380 | "Commodity".   |
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| 15.80.920 | Severability—1969 ex.s. c 100.   |

**15.80.300 Definitions—Application.** Terms used in this chapter shall have the meaning given to them in RCW 15.80.310 through 15.80.400 unless the context where used shall clearly indicate to the contrary. [1969 ex.s. c 100 § 1.]

**15.80.310 "Department".** "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 100 § 2.]

**15.80.320 "Director".** "Director" means the director of the department or his duly appointed representative. [1969 ex.s. c 100 § 3.]

**15.80.330 "Person".** "Person" means a natural person, individual, or firm, partnership, corporation, company, society, or association. This term shall import either the singular or plural, as the case may be. [1969 ex.s. c 100 § 4.]

**15.80.340 "Licensed public weighmaster".** "Licensed public weighmaster" also referred to as weighmaster, means any person, licensed under the provisions of this chapter, who weighs, measures or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure or count accepted as the accurate weight, or count upon which the purchase or sale of any commodity or upon which the basic charge or payment for services rendered is based. [1969 ex.s. c 100 § 5.]

**15.80.350 "Weigher".** "Weigher" means any person who is licensed under the provisions of this chapter and who is an agent or employee of a weighmaster and authorized by the weighmaster to issue certified statements of weight, measure or count. [1969 ex.s. c 100 § 6.]

**15.80.360 "Vehicle".** "Vehicle" means any device, other than a railroad car, in, upon, or by which any commodity, is or may be transported or drawn. [1969 ex.s. c 100 § 7.]

**15.80.370 "Certified weight".** "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a weighmaster or weigher in accordance with the provisions of this chapter or any regulation adopted thereunder. [1969 ex.s. c 100 § 8.]

**15.80.380 "Commodity".** "Commodity" means anything that may be weighed, measured or counted in a commercial transaction. [1969 ex.s. c 100 § 9.]

**15.80.390 "Thing".** "Thing" means anything used to move, handle, transport or contain any commodity for which a certified weight, measure or count is issued when such thing is used to handle, transport, or contain a commodity. [1969 ex.s. c 100 § 10.]

**15.80.400 "Retail merchant".** "Retail merchant" means and includes any person operating from a bona fide fixed or permanent location at which place all of

the retail business of said merchant is transacted, and whose business is exclusively retail except for the occasional wholesaling of small quantities of surplus commodities which have been taken in exchange for merchandise from the producers thereof at the bona fide fixed or permanent location. [1969 ex.s. c 100 § 11.]

**15.80.410 Director's duty to enforce—Adoption of rules.** The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act), as enacted or hereafter amended, concerning the adoption of rules. [1969 ex.s. c 100 § 12.]

**15.80.420 Highway transport of commodities sold by weight—Weighing required—Exceptions.** It shall be a violation of this chapter to transport by highway any hay, straw or grain which has been purchased by weight or will be purchased by weight, unless it is weighed and a certified weight ticket is issued thereon, by the first licensed public weighmaster which would be encountered on the ordinary route to the destination where the hay, straw or grain is to be unloaded: *Provided, however,* That this section shall not apply to the following:

(1) The transportation of, or sale of, hay, straw or grain by the primary producer thereof;

(2) The transportation of hay, straw or grain by an agriculturalist for use in his own growing, or animal or poultry husbandry endeavors;

(3) The transportation of grain by a party who is either a warehouseman or grain dealer and who is licensed under the grain warehouse laws and who makes such shipment in the course of the business for which he is so licensed;

(4) The transportation of hay, straw or grain by retail merchants, except for the provisions of RCW 15.80.430 and 15.80.440;

(5) The transportation of grain from a warehouse licensed under the grain warehouse laws when the transported grain is consigned directly to a public terminal warehouse. [1969 ex.s. c 100 § 13.]

**15.80.430 Certificates of weight and invoices to be carried with loads.** Certificates of weight issued by licensed public weighmasters and invoices for sales by a retail merchant, if the commodity is being hauled by or for such retail merchant, shall be carried with all loads of hay, straw or grain when in transit. [1969 ex.s. c 100 § 14.]

**15.80.440 Reweighing—Weighing—Variance from invoiced weight.** The driver of any vehicle previously weighed by a licensed public weighmaster may be required to reweigh the vehicle and load at the nearest scale.

The driver of any vehicle operated by or for a retail merchant which vehicle contains hay, straw, or grain may be required to weigh the vehicle and load at the nearest scale, and if the weight is found to be less than the amount appearing on the invoice, a copy of which is

required to be carried on the vehicle, the director shall report the finding to the consignee and may cause such retail merchant to be prosecuted in accordance with the provisions of this chapter. [1969 ex.s. c 100 § 15.]

**15.80.450 Weighmaster's license—Applications—Fee—Bond.** Any person may apply to the director for a weighmaster's license. Such application shall be on a form prescribed by the director and shall include:

(1) The full name of the person applying for such license and if the applicant is a partnership, association or corporation, the full name of each member of the partnership or the names of the officers of the association or corporation;

(2) The principal business address of the applicant in this state and elsewhere;

(3) The names of the persons authorized to receive and accept service of summons and legal notice of all kinds for the applicant;

(4) The location of any scale or scales subject to the applicant's control and from which certified weights will be issued; and

(5) Such other information as the director feels necessary to carry out the purposes of this chapter.

Such annual application shall be accompanied by a license fee of twenty dollars for each scale from which certified weights will be issued and a bond as provided for in RCW 15.80.480. [1969 ex.s. c 100 § 16.]

**15.80.460 Weighmaster's license—Issuance—Expiration date.** The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and the rules adopted hereunder and that such applicant is of good moral character, not less than eighteen years of age, and has the ability to weigh accurately and make correct certified weight tickets. Any license issued under this chapter shall expire on June 30th following the date of issuance. [1971 ex.s. c 292 § 14; 1969 ex.s. c 100 § 17.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**15.80.470 Weighmaster's license—Renewal date—Penalty fee.** If an application for renewal of any license provided for in this chapter is not filed prior to July of any one year, there shall be assessed and added to the renewal fee as a penalty therefor fifty percent of said renewal fee which shall be paid by the applicant before any renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not acted as a weighmaster or weigher subsequent to the expiration of his prior license. [1969 ex.s. c 100 § 18.]

**15.80.480 Surety bond.** Any applicant for a weighmaster's license shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be in the sum of one thousand dollars. The bond shall be of

standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules adopted hereunder. Said bond shall be to the state for the benefit of every person availing himself of the services and certifications issued by a weighmaster, or weigher subject to his control. The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face value of such bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled. All such sureties on a bond, as provided herein, shall only be released and discharged from all liability to the state accruing on such bond upon compliance with the provisions of RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, but this shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, and unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license. [1969 ex.s. c 100 § 19.]

**15.80.490 Weigher's license—Employees or agents to issue weight tickets—Application—Fee.** Any weighmaster may file an application with the director for a license for any employee or agent to operate and issue certified weight tickets from a scale which such weighmaster is licensed to operate under the provisions of this chapter. Such application shall be submitted on a form prescribed by the director and shall contain the following:

(1) Name of the weighmaster;

(2) The full name of the employee or agent and his resident address;

(3) The position held by such person with the weighmaster;

(4) The scale or scales from which such employee or agent will issue certified weights; and

(5) Signature of the weigher and the weighmaster.

Such annual application shall be accompanied by a license fee of five dollars. [1969 ex.s. c 100 § 20.]

**15.80.500 Weigher's license—Issuance—Expiration date.** Upon the director's satisfaction that the applicant is of good moral character, has the ability to weigh accurately and make correct certified weight tickets and that he is an employee or agent of the weighmaster, the director shall issue a weigher's license which will expire on June 30th following the date of issuance. [1969 ex.s. c 100 § 21.]

**15.80.510 Duties of weighmaster.** A licensed public weighmaster shall: (1) Keep the scale or scales upon which he weighs any commodity or thing, in conformity

with the standards of weights and measures; (2) carefully and correctly weigh and certify the gross, tare and net weights of any load of any commodity or thing required to be weighed; and (3) without charge, weigh any commodity or thing brought to his scale by an inspector authorized by the director, and issue a certificate of the weights thereof. [1969 ex.s. c 100 § 22.]

**15.80.520 Certification of weights—Impression seal—Fee.** Certification of weights shall be made by means of an impression seal, the impress of which shall be placed by the weighmaster or weigher making the weight determination upon the weights shown on the weight tickets. The impression seal shall be procured from the director upon the payment of an annual fee of five dollars and such fee shall accompany the applicant's application for a weighmaster's license. Such impression seal shall be used only at the scale to which it is assigned and shall remain the property of the state and shall be returned forthwith to the director upon the termination, suspension or revocation of the weighmaster's license. [1969 ex.s. c 100 § 23.]

**15.80.530 Certified weight ticket—Form—Contents—Evidence.** The certified weight ticket shall be of a form approved by the director and shall contain the following information:

- (1) The date of issuance;
- (2) The kind of commodity weighed, measured, or counted;
- (3) The name of owner, agent, or consignee of the commodity weighed;
- (4) The name of seller, agent or consignor;
- (5) The accurate weight, measure or count of the commodity weighed, measured or counted; including the entry of the gross, tare and/or net weight, where applicable;
- (6) The identifying numerals or symbols, if any, of each container separately weighed and the motor vehicle license number of each vehicle separately weighed;
- (7) The means by which the commodity was being transported at the time it was weighed, measured or counted;
- (8) The name of the city or town where such commodity was weighed;
- (9) The complete signature of weighmaster or weigher who weighed, measured or counted the commodity; and
- (10) Such other available information as may be necessary to distinguish or identify the commodity.

Such weight certificates when so made and properly signed and sealed shall be prima facie evidence of the accuracy of the weights, measures or count shown, as a certified weight, measure or count. [1969 ex.s. c 100 § 24.]

**15.80.540 Copies of weight tickets.** Certified weight tickets shall be made in triplicate, one copy to be delivered to the person receiving the weighed commodity at the time of delivery, which copy shall accompany the vehicle that transports such commodity, one copy to be forwarded to the seller by the carrier of the weighed

commodity, and one copy to be retained by the weighmaster that weighed the vehicle transporting such commodity. The copy retained by the weighmaster shall be kept at least for a period of one year, and such copies and such other records as the director shall determine necessary to carry out the purposes of this chapter shall be made available at all reasonable business hours for inspection by the director. [1969 ex.s. c 100 § 25.]

**15.80.550 Weighmaster or weigher to determine weights—Automatic devices.** No weighmaster or weigher shall enter a weight value on a certified weight ticket that he has not determined and he shall not make a weight entry on a weight ticket issued at any other location: *Provided, however,* That if the director determines that an automatic weighing or measuring device can accurately and safely issue weights in conformance with the purpose of this chapter, he may adopt a regulation to provide for the use of such a device for the issuance of certified weight tickets. The certified weight ticket shall be so prepared that it will show the weight or weights actually determined by the weighmaster. In any case in which only the gross, the tare or the net weight is determined by the weighmaster he shall strike through or otherwise cancel the printed entries for the weights not determined or computed by him. [1969 ex.s. c 100 § 26.]

**15.80.560 Weighing devices to be suitable—Testing of weighing and measuring devices.** A licensed public weighmaster shall in making a weight determination as provided for in this chapter, use a weighing device that is suitable for the weighing of the type and amount of commodity being weighed. The director shall cause to be tested for proper state standards of weight all weighing or measuring devices utilized by any licensed public weighmaster. Certified weights shall not be issued over a device that has been rejected or condemned for repair or use by the director until such device has been repaired. [1969 ex.s. c 100 § 27.]

**15.80.570 Weighing devices—Rated capacity to exceed weight of load.** A weighmaster shall not use a weighing device to determine the weight of a load when the weight of such load exceeds the manufacturer's maximum rated capacity for such weighing device. If upon inspection the director declares that the maximum rated capacity of any weighing device is less than the manufacturer's maximum rated capacity, the weighmaster shall not weigh a load that exceeds the director's declared maximum rated capacity for such weighing device. [1969 ex.s. c 100 § 28.]

**15.80.580 Weighing devices—Platform size to sufficiently accommodate vehicles.** No weighmaster shall weigh a vehicle or combination of vehicles to determine the weight of such vehicle or combination of vehicles unless the weighing device has a platform of sufficient size to accommodate such vehicle or combination of vehicles fully and completely as one entire unit. When a combination of vehicles must be broken up into separate units in order to be weighed as prescribed, each

separate unit shall be entirely disconnected before weighing and a separate certified weight ticket shall be issued for each separate unit. [1969 ex.s. c 100 § 29.]

**15.80.590 Denial, suspension or revocation of licenses—Hearing.** The director is hereby authorized to deny, suspend, or revoke a license subsequent to a hearing, if a hearing is requested, in any case in which he finds that there has been a failure to comply with the requirements of this chapter or rules adopted hereunder. Such hearings shall be subject to chapter 34.04 RCW (Administrative Procedure Act), as enacted or hereafter amended, concerning contested cases. [1969 ex.s. c 100 § 30.]

**15.80.600 Hearings for denial, suspension or revocation of licenses—Notice—Location.** For hearings for revocations, suspension, or denial of a license, the director shall give the licensee or applicant such notice as is required under the provisions of chapter 34.04 RCW, as enacted or hereafter amended. Such hearings shall be held in the county where the licensee resides. [1969 ex.s. c 100 § 31.]

**15.80.610 Subpoenas—Oaths.** The director, for the purposes of this chapter, may issue subpoenas to compel the attendance of witnesses, and/or the production of books and/or documents anywhere in the state. The party shall have opportunity to make his defense, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. [1969 ex.s. c 100 § 32.]

**15.80.620 Assuming to act as weighmaster or weigher.** It shall be unlawful for any person not licensed pursuant to the provisions of this chapter to:

- (1) Hold himself out, in any manner, as a weighmaster or weigher; or
- (2) Issue any ticket as a certified weight ticket. [1969 ex.s. c 100 § 33.]

**15.80.630 Falsifying weight tickets, weight or count—Unlawfully delegating—Presealing before weighing.** It shall be unlawful for a weighmaster or weigher to falsify a certified weight ticket, or to cause an incorrect weight, measure or count to be determined, or delegate his authority to any person not licensed as a weigher, or to pre seal a weight ticket with his official seal before performing the act of weighing. [1969 ex.s. c 100 § 34.]

**15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty.** Any person who shall mark, stamp or write any false weight ticket, scale ticket, or weight certificate, knowing it to be false, and any person who influences, or attempts to wrongfully influence any licensed public weighmaster or weigher in the performance of his official duties shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars

nor more than one thousand dollars, or by imprisonment of not less than thirty days nor more than one year in the county jail, or by both such fine and imprisonment. [1969 ex.s. c 100 § 35.]

**15.80.650 Violations—Penalty.** Any person violating any provision of this chapter, except as provided in RCW 15.80.640, or rules adopted hereunder, is guilty of a misdemeanor and upon a second or subsequent offense, shall be guilty of a gross misdemeanor: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 ex.s. c 100 § 36.]

**15.80.900 Chapter cumulative.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1969 ex.s. c 100 § 37.]

**15.80.910 Effective date—1969 ex.s. c 100.** This act shall take effect on July 1, 1969. [1969 ex.s. c 100 § 38.]

**15.80.920 Severability—1969 ex.s. c 100.** If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1969 ex.s. c 100 § 39.]

## Chapter 15.98 CONSTRUCTION

### Sections

|           |  |
|-----------|--|
| 15.98.010 | Continuation of existing law.                        |
| 15.98.020 | Title, chapter, section headings not part of law.    |
| 15.98.030 | Invalidity of part of title not to affect remainder. |
| 15.98.040 | Repeals and saving.                                  |
| 15.98.050 | Emergency—1961 c 11.                                 |

**15.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 11 § 15.98.010.]

**15.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 11 § 15.98.020.]

**15.98.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 11 § 15.98.030.]

**15.98.040 Repeals and saving.** The following acts or parts of acts are repealed:

- (1) Sections 1, 2 and 3, page 328, Laws of 1869;
- (2) Chapter 9, Laws of 1891;
- (3) Chapter 134, Laws of 1893;



- (4) Chapter 45, Laws of 1895;  
 (5) Chapter 51, Laws of 1895;  
 (6) Chapter 104, Laws of 1895;  
 (7) Chapter 12, Laws of 1897;  
 (8) Chapter 15, Laws of 1897;  
 (9) Chapter 109, Laws of 1897;  
 (10) Chapter 43, Laws of 1899;  
 (11) Chapter 50, Laws of 1899;  
 (12) Chapter 113, Laws of 1899;  
 (13) Chapter 127, Laws of 1899;  
 (14) Chapter 22, Laws of 1901;  
 (15) Chapter 94, Laws of 1901;  
 (16) Chapter 160, Laws of 1901;  
 (17) Chapter 54, Laws of 1903;  
 (18) Chapter 133, Laws of 1903;  
 (19) Chapter 174, Laws of 1903;  
 (20) Chapter 51, Laws of 1905;  
 (21) Chapter 92, Laws of 1905;  
 (22) Chapter 111, Laws of 1905;  
 (23) Chapter 176, Laws of 1905;  
 (24) Chapter 162, Laws of 1907;  
 (25) Chapter 211, Laws of 1907;  
 (26) Chapter 234, Laws of 1907;  
 (27) Chapter 62, Laws of 1909;  
 (28) Chapter 135, Laws of 1909;  
 (29) Chapter 152, Laws of 1909;  
 (30) Chapter 175, Laws of 1909;  
 (31) Chapter 201, Laws of 1909;  
 (32) Chapter 237, Laws of 1909;  
 (33) Chapter 39, Laws of 1911;  
 (34) Chapter 112, Laws of 1911;  
 (35) Section 11, chapter 60, Laws of 1913;  
 (36) Chapter 18, Laws of 1913;  
 (37) Chapter 101, Laws of 1915;  
 (38) Chapter 102, Laws of 1915;  
 (39) Chapter 166, Laws of 1915;  
 (40) Chapter 119, Laws of 1917;  
 (41) Chapter 65, Laws of 1919;  
 (42) Chapter 101, Laws of 1919;  
 (43) Chapter 116, Laws of 1919;  
 (44) Chapter 145, Laws of 1919;  
 (45) Chapter 183, Laws of 1919;  
 (46) Chapter 192, Laws of 1919;  
 (47) Chapter 193, Laws of 1919;  
 (48) Chapter 195, Laws of 1919;  
 (49) Chapter 104, Laws of 1921;  
 (50) Chapter 141, Laws of 1921;  
 (51) Chapter 153, Laws of 1921;  
 (52) Chapter 27, Laws of 1923;  
 (53) Chapter 37, Laws of 1923;  
 (54) Chapter 55, Laws of 1923;  
 (55) Chapter 137, Laws of 1923;  
 (56) Chapter 49, Laws of 1925, extraordinary session;  
 (57) Chapter 67, Laws of 1925, extraordinary session;  
 (58) Chapter 108, Laws of 1925, extraordinary session;  
 (59) Chapter 175, Laws of 1925, extraordinary session;  
 (60) Chapter 176, Laws of 1925, extraordinary session;  
 (61) Chapter 151, Laws of 1927;  
 (62) Chapter 164, Laws of 1927;  
 (63) Chapter 192, Laws of 1927;  
 (64) Chapter 311, Laws of 1927;  
 (65) Chapter 150, Laws of 1929;  
 (66) Chapter 166, Laws of 1929;  
 (67) Chapter 175, Laws of 1929;  
 (68) Chapter 213, Laws of 1929;  
 (69) Chapter 23, Laws of 1931;  
 (70) Chapter 27, Laws of 1931;  
 (71) Chapter 23, Laws of 1933;  
 (72) Chapter 84, Laws of 1933;  
 (73) Chapter 188, Laws of 1933;  
 (74) Chapter 46, Laws of 1933, extraordinary session;  
 (75) Chapter 59, Laws of 1933, extraordinary session;  
 (76) Chapter 140, Laws of 1935;  
 (77) Chapter 168, Laws of 1935;  
 (78) Chapter 37, Laws of 1937;  
 (79) Chapter 49, Laws of 1937;  
 (80) Chapter 71, Laws of 1937;  
 (81) Chapter 136, Laws of 1937;  
 (82) Chapter 148, Laws of 1937;  
 (83) Chapter 175, Laws of 1937;  
 (84) Chapter 195, Laws of 1937;  
 (85) Chapter 204, Laws of 1937;  
 (86) Chapter 43, Laws of 1939;  
 (87) Chapter 211, Laws of 1939;  
 (88) Chapter 219, Laws of 1939;  
 (89) Chapter 222, Laws of 1939;  
 (90) Chapter 224, Laws of 1939;  
 (91) Chapter 20, Laws of 1941;  
 (92) Chapter 56, Laws of 1941;  
 (93) Chapter 130, Laws of 1941;  
 (94) Chapter 189, Laws of 1941;  
 (95) Chapter 230, Laws of 1941;  
 (96) Chapter 64, Laws of 1943;  
 (97) Chapter 90, Laws of 1943;  
 (98) Chapter 150, Laws of 1943;  
 (99) Chapter 248, Laws of 1943;  
 (100) Chapter 263, Laws of 1943;  
 (101) Chapter 113, Laws of 1945;  
 (102) Chapter 63, Laws of 1947;  
 (103) Chapter 73, Laws of 1947;  
 (104) Chapter 280, Laws of 1947;  
 (105) Chapter 13, Laws of 1949;  
 (106) Chapter 40, Laws of 1949;  
 (107) Chapter 89, Laws of 1949;  
 (108) Sections 1 through 5, and section 7, chapter 105, Laws of 1949;  
 (109) Chapter 167, Laws of 1949;  
 (110) Chapter 168, Laws of 1949;  
 (111) Chapter 185, Laws of 1949;  
 (112) Chapter 191, Laws of 1949;  
 (113) Chapter 193, Laws of 1949;  
 (114) Chapter 20, Laws of 1951;  
 (115) Chapter 60, Laws of 1951;  
 (116) Chapter 169, Laws of 1951;  
 (117) Chapter 1, Laws of 1953;  
 (118) Chapter 43, Laws of 1953;  
 (119) Chapter 80, Laws of 1953;  
 (120) Chapter 85, Laws of 1953;  
 (121) Chapter 98, Laws of 1953;  
 (122) Chapter 119, Laws of 1953;  
 (123) Chapter 146, Laws of 1953;

- (124) Chapter 153, Laws of 1953;
- (125) Chapter 170, Laws of 1953;
- (126) Chapter 204, Laws of 1953;
- (127) Chapter 222, Laws of 1953;
- (128) Chapter 246, Laws of 1953;
- (129) Chapter 263, Laws of 1953;
- (130) Chapter 47, Laws of 1955;
- (131) Sections 1 through 4, chapter 106, Laws of 1955;
- (132) Chapter 191, Laws of 1955;
- (133) Chapter 227, Laws of 1955;
- (134) Chapter 233, Laws of 1955;
- (135) Chapter 238, Laws of 1955;
- (136) Chapter 271, Laws of 1955;
- (137) Chapter 306, Laws of 1955;
- (138) Chapter 308, Laws of 1955;
- (139) Chapter 343, Laws of 1955;
- (140) Chapter 368, Laws of 1955;
- (141) Chapter 122, Laws of 1957;
- (142) Chapter 133, Laws of 1957;
- (143) Chapter 151, Laws of 1957;
- (144) Chapter 163, Laws of 1957;
- (145) Chapter 192, Laws of 1957;
- (146) Chapter 65, Laws of 1959;
- (147) Chapter 152, Laws of 1959;
- (148) Chapter 163, Laws of 1959;
- (149) Chapter 174, Laws of 1959;
- (150) Chapter 222, Laws of 1959;
- (151) Chapter 223, Laws of 1959;
- (152) Chapter 230, Laws of 1959.

Such repeals shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder, nor the term of office or appointment or employment of any person appointed or employed thereunder. [1961 c 11 § 15.98.040.]

**15.98.050 Emergency—1961 c 11.** 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. [1961 c 11 § 15.98.050.]

# TITLE 16

## ANIMALS, ESTRAYS, BRANDS AND FENCES

### Chapters

- 16.04 Trespass of animals—General.
- 16.08 Damage by dogs.
- 16.10 Dogs—Licensing—Dog control zones.
- 16.12 Swine, sheep, and goats at large.
- 16.13 Horses, mules, and asses at large.
- 16.16 Stallions and jacks at large.
- 16.20 Bulls at large.
- 16.24 Stock restricted areas.
- 16.28 Estrays.
- 16.36 Diseases—Quarantine—Garbage feeding.
- 16.38 Livestock diseases—Diagnostic service program.
- 16.40 Tuberculosis and Bang's disease control.
- 16.44 Diseases of sheep.
- 16.46 Diseases of poultry.
- 16.48 Slaughtering and transporting livestock.
- 16.49 Custom slaughtering.
- 16.49A Washington meat inspection act.
- 16.50 Humane slaughter of livestock.
- 16.52 Prevention of cruelty to animals.
- 16.54 Abandoned animals.
- 16.57 Identification of livestock.
- 16.58 Identification of cattle through licensing of certified feed lots.
- 16.60 Fences.
- 16.65 Public livestock markets.
- 16.67 Washington state beef commission act.
- 16.68 Disposal of dead animals.
- 16.70 Control of pet animals infected with diseases communicable to humans.
- 16.72 Fur farming.
- 16.74 Washington wholesome poultry products act.

*Agister and trainer liens: Chapter 60.56 RCW.*

*Carrier or racing pigeons—Injury to: RCW 9.61.190–9.61.210.*

*Control of predatory birds injurious to agriculture: RCW 15.04.110–15.04.120.*

*"Coyote getters" may be used to control coyotes: RCW 9.41.185.*

*Director of agriculture: Chapter 43.23 RCW.*

*Dog license tax, counties: Chapter 36.49 RCW.*

*Grazing ranges: Chapter 79.28 RCW, RCW 79.01.244, 79.01.296.*

*Killing of person by vicious animal: RCW 9.48.100.*

*Larcenous appropriation of livestock: RCW 9.54.115.*

*Milk and milk products for animal food: Chapter 15.37 RCW.*

*Race horses: Chapter 67.16 RCW.*

*Stealing horses or cattle as larceny: RCW 9.54.090.*

### Chapter 16.04

#### TRESPASS OF ANIMALS—GENERAL

##### Sections

- 16.04.005 Liability for damages—Restraint—Code 1881.
- 16.04.010 Liability for damages—Restraint—1893 act.
- 16.04.020 Notice of restraint—Owner known.
- 16.04.025 Notice of restraint—Owner unknown.
- 16.04.030 Actions for damages.
- 16.04.040 Jurisdiction—Appeal.
- 16.04.045 Continuance.
- 16.04.050 Substituted service.
- 16.04.060 Sale—When costs may be charged to plaintiff.
- 16.04.070 Surplus—Disposition.
- 16.04.080 Stock on United States military reservation.

*Allowing vicious animal to run at large: RCW 9.08.010.*

*Diseased animals, sale, etc.: RCW 9.08.020.*

*Disturbance on public highway: RCW 9.27.020.*

*Fences: Chapter 16.60 RCW.*

**16.04.005 Liability for damages—Restraint—Code 1881.** See RCW 16.60.015.

**16.04.010 Liability for damages—Restraint—1893 act.** Any person suffering damage done by any horses, mares, mules, asses, cattle, goats, sheep, swine, or any such animals, which shall trespass upon any cultivated land, inclosed by lawful fence or situated within any district created pursuant to RCW 16.24.010 through 16.24.065, may retain and keep in custody such offending animals until the owner of such animals shall pay such damage and costs, or until good and sufficient security be given for the same. [1925 ex.s. c 56 § 1; 1893 c 31 § 1; RRS § 3090.]

*Answer in action to recover property distrained: RCW 4.36.140.*

*Damages to stock on unfenced railroad: RCW 81.52.050 through 81.52.070.*

**16.04.020 Notice of restraint—Owner known.** Whenever any animals are restrained as provided in RCW 16.04.010, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, and the probable amount of the damages sustained: *Provided*, He knows to whom such animals belong. [1893 c 31 § 2; RRS § 3091. FORMER PART OF SECTION: 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092, now codified as RCW 16.04.025.]

**16.04.025 Notice of restraint—Owner unknown.** If the owner or the person having in charge or possession such animals is unknown to the person sustaining the damage, the notice provided in RCW 16.04.020 shall be

given by posting three notices, in three public places in the neighborhood where the animals are restrained. [1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092. Formerly RCW 16.04.020, part.]

**16.04.030 Actions for damages.** If the owner or person having such animals in charge fails or refuses to pay the damages done by such animals, and the costs, or give satisfactory security for the same within twenty-four hours from the time the notice was served, if served personally, or in case of horses, mares, mules and asses, within twenty-four hours from the time such notice was posted, if served by posting the same, and in case of cattle, goats, sheep and swine within ten days from the time of such posting, the person damaged may commence a suit, before any court having jurisdiction thereof, against the owner of such animals, or against the persons having the same in charge, or possession, when the trespass was committed, if known; and if unknown the defendant shall be designated as John Doe, and the proceedings shall be the same in all respects as in other civil actions, except as modified in RCW 16.04.010 through 16.04.070. If such suit is commenced in superior court the summons shall require the defendant to appear within five days from the date of service of such summons, if served personally. [1925 ex.s. c 56 § 3; 1893 c 31 § 4; RRS § 3093.]

**16.04.040 Jurisdiction—Appeal.** Justices of the peace shall have exclusive jurisdiction of all actions and proceedings under RCW 16.04.010 through 16.04.070 when the damages claimed do not exceed one hundred dollars: *Provided, however,* That any party considering himself aggrieved shall have the right of appeal to the superior court as in other cases. [1893 c 31 § 9; RRS § 3098.]

**16.04.045 Continuance.** If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, the case shall be continued, and proceedings had as in RCW 16.04.050 provided, if the proper defendant be unknown to plaintiff. [1893 c 31 § 6; RRS § 3095. Formerly RCW 16.04.050, part.]

**16.04.050 Substituted service.** If the owner or keeper of such offending animals is unknown to plaintiff at the commencement of the action, or if on the trial it appears that the defendant is not the proper party, defendant, and the proper party is unknown, service of the summons or notice shall be made by publication, by publishing a copy of the summons or notice, with a notice attached, stating the object of the action and giving a description of the animals seized, in a weekly newspaper published nearest to the residence of the plaintiff, if there be one published in the county; and if not, by posting said summons or notice with said notice attached in three public places in the county, in either case not less than ten days previous to the day of trial. [1893 c 31 § 7; RRS § 3096. FORMER PART OF SECTION: 1893 c 31 § 6; RRS § 3095, now codified as RCW 16.04.045.]

**16.04.060 Sale—When costs may be charged to plaintiff.** Upon the trial of an action as herein provided [RCW 16.04.010 through 16.04.070] the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred for keeping the offending animals, and any judgment rendered for damages, costs, and expenses against the defendant shall be a lien upon such animals committing the damage, and the same may be sold and the proceeds shall be applied in full satisfaction of the judgment as in other cases of sale of personal property on execution: *Provided,* That no judgment shall be continued against the defendant for any deficiency over the amount realized on the sale of such animals, if it shall appear upon the trial that no damage was sustained, or that a tender was made and paid into court of an amount equal to the damage and costs, then judgment shall be rendered against the plaintiff for costs of suit and damage sustained by defendant. [1893 c 31 § 5; RRS § 3094.]

**16.04.070 Surplus—Disposition.** If when such animals are sold, there remains a surplus of money, over the amount of the judgment and costs, it shall be deposited with the county treasurer, by the officer making the sale, and if the owner of such animals does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund, for the use of the public schools of said county. [1893 c 31 § 8; RRS § 3097.]

**16.04.080 Stock on United States military reservation.** It shall be unlawful for the owner of any livestock to allow such livestock to run at large or be upon any United States military reservation upon which field artillery firing or other target practice with military weapons is conducted. Any owner who permits livestock to run at large or be upon any such reservation shall do so at the risk of such owner and such owner shall have no claim for damages if such livestock is injured or destroyed while so running at large on such reservation: *Provided, however,* That the commanding officer of any such United States military reservation may issue permits for specific areas and for specific periods of time when firing will not be conducted thereon authorizing the owner of such livestock to permit the same to run at large or be upon any such military reservation. [1937 c 101 § 1; RRS § 3068-1.]

## Chapter 16.08 DAMAGE BY DOGS

### Sections

|           |  |
|-----------|--|
| 16.08.010 | Injury to stock by dogs—Damages.             |
| 16.08.020 | Dogs injuring stock may be killed.           |
| 16.08.030 | Duty of owner to kill marauding dog.         |
| 16.08.040 | Liability for dog bites.                     |
| 16.08.050 | When entrance on private property is lawful. |
| 16.08.060 | Provocation as a defense.                    |

**16.08.010 Injury to stock by dogs—Damages.** The owner or keeper of any dog shall be liable to the owner of any animal killed or injured by such dog for the amount of damages sustained and costs of collection, to

be recovered in a civil action: *Provided*, That in case the owner or keeper of such dog or dogs is unknown or the damages can not be collected, the person suffering damages may present a claim for such damages to a justice of the peace of the county in which he resides within not more than forty days after any such animal or animals are killed or injured and make affidavit, stating the number of such animals killed or injured, the amount of the damages and the name of the owner of the dog or dogs, if known. The damages shall be proven by not less than two witnesses who shall be freeholders of the county. Justices of the peace are hereby required to administer oaths in such cases and shall issue and file with the county treasurer a certificate stating the amount of damages sustained. Such damages allowed in no event shall exceed the following amounts:

**UNREGISTERED ANIMALS OR UNACCREDITED POULTRY.**

|   | Per Head |
|---|----------|
| For sheep or goats killed or injured . . . . .  | \$ 12.50 |
| For cattle killed or injured . . . . .          | 50.00    |
| For horses or mules killed or injured . . . . . | 75.00    |
| For turkeys killed or injured . . . . .         | 4.00     |
| For other poultry killed or injured . . . . .   | 1.50     |
| For swine killed or injured . . . . .           | 12.50    |
| For rabbits killed or injured . . . . .         | 1.50     |

**REGISTERED ANIMALS OR ACCREDITED POULTRY.**

|   | Per Head |
|---|----------|
| For sheep or goats killed or injured . . . . .  | \$ 25.00 |
| For cattle killed or injured . . . . .          | 100.00   |
| For horses or mules killed or injured . . . . . | 150.00   |
| For turkeys killed or injured . . . . .         | 8.00     |
| For other poultry killed or injured . . . . .   | 3.00     |
| For swine killed or injured . . . . .           | 25.00    |
| For rabbits killed or injured . . . . .         | 3.00     |

Upon the filing with the county treasurer of the certificate of the justice of the peace fixing the damages as above provided, the treasurer shall pay to the claimant out of the county dog license tax fund the amount of damages sustained as certified by the justice of the peace. [1929 c 198 § 5; RRS § 3106. Prior: 1919 c 6 § 5; RCS § 3106.]

*For dog license tax, proceeds of which are available for payments under this section: Chapter 36.49 RCW.*

**16.08.020 Dogs injuring stock may be killed.** It shall be lawful for any person who shall see any dog or dogs chasing, biting, injuring or killing any sheep, swine or other domestic animal, including poultry, belonging to such person, on any real property owned or leased by, or under the control of, such person, or on any public highway, to kill such dog or dogs, and it shall be the duty of the owner or keeper of any dog or dogs so found chasing, biting or injuring any domestic animal, including poultry, upon being notified of that fact by the owner of such domestic animals or poultry, to thereafter keep such dog or dogs in leash or confined upon the premises of the owner or keeper thereof, and in case any such owner or keeper of a dog or dogs shall

fail or neglect to comply with the provisions of this section, it shall be lawful for the owner of such domestic animals or poultry to kill such dog or dogs found running at large. [1929 c 198 § 6; RRS § 3107. Prior: 1919 c 6 § 6; 1917 c 161 § 6; RCS § 3107.]

**16.08.030 Duty of owner to kill marauding dog.** It shall be the duty of any person owning or keeping any dog or dogs which shall be found killing any domestic animal to kill such dog or dogs within forty-eight hours after being notified of that fact, and any person failing or neglecting to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and it shall be the duty of the sheriff or any deputy sheriff to kill any dog found running at large (after the first day of August of any year and before the first day of March in the following year) without a metal identification tag. [1929 c 198 § 7; RRS § 3108. Prior: 1919 c 6 § 7; 1917 c 161 § 7; RCS § 3108.]

**16.08.040 Liability for dog bites.** The owner of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness. [1941 c 77 § 1; Rem. Supp. 1941 § 3109-1.]

**16.08.050 When entrance on private property is lawful.** A person is lawfully upon the private property of such owner within the meaning of RCW 16.08.040 through 16.08.060 when he is on such property in the performance of any duty imposed upon him by the laws of the state of Washington or of the United States or the ordinances of any municipality in which such property is situated. [1941 c 77 § 2; Rem. Supp. 1941 § 3109-2.]

**16.08.060 Provocation as a defense.** Proof of provocation of the attack by the injured person shall be a complete defense to an action for damages. [1941 c 77 § 3; Rem. Supp. 1941 § 3109-3.]

**Chapter 16.10  
DOGS—LICENSING—DOG CONTROL  
ZONES**

| Sections  | Purpose.   |
|-----------|--|
| 16.10.010 | Purpose.   |
| 16.10.020 | Dog control zones—Determination of need by county commissioners.     |
| 16.10.030 | Dog control zones—Public hearing, publication of notice.             |
| 16.10.040 | Dog control zones—Regulations—License fees, collection, disposition. |

*Dogs—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.060.*

**16.10.010 Purpose.** The purpose of this chapter is to provide for the licensing of dogs within specific areas of particular counties. [1969 c 72 § 1.]

**16.10.020 Dog control zones—Determination of need by county commissioners.** County commissioners may, if the situation so requires, establish dog control zones within high density population districts, or other specified areas, of a county outside the corporate limits of any city, and outside the corporate limits of any organized township. For such zones, licensing regulations may be established which shall not necessarily be operative in sparsely settled rural districts, or in other portions of the county where they may not be needed. In determining the need for such zones, and in drawing their boundaries, county commissioners shall take into consideration the following factors:

- (1) The density of population in the area proposed to be zoned;
- (2) Zoning regulations, if any, in force in the area proposed to be zoned;
- (3) The public health, safety and welfare within the area proposed to be zoned.

If the commissioners shall find that the area proposed to be zoned is heavily populated, or that the purposes for which the land is being used therein require that dogs be controlled, or that the health, safety, and welfare of the people in the area require such control, they may propose the establishment of a dog control zone. [1969 c 72 § 2.]

**16.10.030 Dog control zones—Public hearing, publication of notice.** In determining whether a dog control zone should be established, the county commissioners shall call a public hearing, notice of which shall be published once a week for each of four consecutive weeks prior thereto in a newspaper of general circulation within the proposed zone. At such a hearing, proponents and opponents of the proposed dog control zone may appear and present their views. The final decision of the commissioners with respect to the establishment of such a zone shall not be made until the conclusion of the hearing. [1969 c 72 § 3.]

**16.10.040 Dog control zones—Regulations—License fees, collection, disposition.** The county commissioners shall by ordinance promulgate the regulations to be enforced within a dog control zone. These shall include provisions for the control of unlicensed dogs and the establishment of license fees. The county sheriff and/or other agencies designated by the county commissioners shall be responsible for the enforcement of the act, including the collection of license fees. Fees collected shall be transferred to the current expense fund of each county. [1969 c 72 § 4.]

## Chapter 16.12

### SWINE, SHEEP, AND GOATS AT LARGE

#### Sections

|           |                                       |
|-----------|---------------------------------------|
| 16.12.010 | Unlawful to allow swine at large.     |
| 16.12.020 | Liability for trespassing swine.      |
| 16.12.030 | Swine may be restrained—Notice.       |
| 16.12.040 | Damages to be assessed by appraisers. |
| 16.12.050 | Appraisers—Oath and duties.           |
| 16.12.060 | Fees.                                 |
| 16.12.070 | Fencing against swine unnecessary.    |
| 16.12.080 | Swine may be driven on highway.       |

|           |   |
|-----------|---|
| 16.12.090 | Sheep or goats on land of another unlawful. |
| 16.12.100 | Penalty.                                    |
| 16.12.110 | When public land deemed private.            |

**16.12.010 Unlawful to allow swine at large.** It shall be unlawful for the owner or owners of any swine to allow them to run at large in any county in the state. [1890 p 454 § 1; RRS § 3073. FORMER PART OF SECTION: 1911 c 25 § 5; RRS § 3072, now codified as RCW 16.24.090.]

*Swine not permitted at large: RCW 16.24.090.*

**16.12.020 Liability for trespassing swine.** If any swine shall be suffered to run at large in any county of this state contrary to the provisions of RCW 16.12.010 through 16.12.080, and shall trespass upon the land of any person, the owner or person having possession of such swine shall be liable for all damages the owner or occupant of such land may sustain by reason of such trespass; and if the owner or person having possession of such swine shall knowingly or negligently permit the same to run at large contrary to the provisions of RCW 16.12.010 through 16.12.080, for a second or subsequent act of trespass by such swine, such owner or person shall be liable for treble the amount of damages done by the same, and such damages may be recovered in a civil action before any justice of the peace. [1927 c 86 § 1; 1890 p 454 § 2; RRS § 3075.]

**16.12.030 Swine may be restrained—Notice.** If any swine shall be found running at large contrary to the provisions of RCW 16.12.010 through 16.12.080, it shall be lawful for any person to restrain the same forthwith, and shall immediately give the owner notice in writing that he has restrained said swine, and the amount of damages he claims in the premises, and requiring the owner to take said swine away and pay such damages. If said owner fails to comply with the provisions of this section within three days after receiving such notice, such damages may be recovered in a civil action before any justice of the peace, and such person who sustains damages as aforesaid shall have a lien upon said swine for the damages sustained by the said swine, and for keeping same: *Provided*, That if the owner of such swine is unknown, the notice required in this section shall be published for two weeks in a newspaper published in the county. [1899 c 39 § 1; 1890 p 454 § 3; RRS § 3075.]

**16.12.040 Damages to be assessed by appraisers.** If the owner of such swine so restrained shall object to the damages claimed by the person having such swine in possession and the parties cannot agree upon the same, either party may apply to any justice of the peace of the precinct, and if there be no justice of the peace in the precinct, then the nearest justice in [the] county, for the appointment of appraisers to assess the damages done by such swine, and the reasonable cost of taking up and keeping the same; and it shall be the duty of such justice of the peace to issue notice to three disinterested freeholders of the precinct to appear upon the premises

where such swine may be and assess the damages as herein required. [1890 p 455 § 4; RRS § 3076.]

**16.12.050 Appraisers—Oath and duties.** The persons so notified, or any two of them attending, shall take an oath that they will fairly and impartially assess the damages in controversy, and they shall make out, sign and deliver to each party a written statement of their appraisal of damages in the premises, and upon the payment of the damages and expenses allowed by such appraisers the owner shall be entitled to take his swine away; and if refused, the same may maintain an action therefor, as in other cases of wrongful taking or detention of property. [1890 p 455 § 5; RRS § 3077.]

**16.12.060 Fees.** The justice of the peace shall be allowed a fee of fifty cents for issuing the notice and swearing the appraisers, and the constable or person serving the notice shall be allowed a fee of one dollar for each appraiser notified, and mileage to and from the place of service; each appraiser shall be allowed a fee of one dollar, which fee shall be paid by the owner of such swine before he shall be entitled to take them away. Or if such owner fails to pay such fees, the person having such swine shall pay the same and may add the same to the damages allowed him in the premises. [1890 p 455 § 6; RRS § 3078.]

**16.12.070 Fencing against swine unnecessary.** It shall not be necessary for any person to fence against swine in this state, and it shall be no defense to any action or proceeding brought or had under the provisions of RCW 16.12.010 through 16.12.080 that the party injured or taking up any swine did not have his lands enclosed by a lawful fence. [1890 p 456 § 7; RRS § 3079.]

**16.12.080 Swine may be driven on highway.** Nothing in RCW 16.12.010 through 16.12.080 shall be so construed as to prevent owners or other persons from driving swine from one place to another along any public highway, the owner or owners being responsible for all damages that any person or persons may sustain in consequence. [1890 p 456 § 8; RRS § 3080.]

**16.12.090 Sheep or goats on land of another unlawful.** It shall be unlawful in this state for sheep or goats to enter any land or lands, enclosed or unenclosed, belonging to or in the possession of any person other than the owner of such sheep or goats, unless by the consent of the owner of said land other than the public lands of the United States. [1945 c 33 § 1; 1913 c 159 § 1; 1907 c 53 § 1; 1888 c 115 § 1; Rem. Supp. 1945 § 3100.]

**16.12.100 Penalty.** Any person, being the owner or having in his possession, charge, or control, as herder, or otherwise, any sheep or goats, who shall herd or drive such sheep or goats upon the lands of another for the purpose of pasture, against the consent of the owner of such lands, shall be deemed guilty of a misdemeanor. [1945 c 33 § 2; 1913 c 159 § 2; 1907 c 53 § 2; 1888 c 115 § 2; Rem. Supp. 1945 § 3101.]

**16.12.110 When public land deemed private.** Lands owned or claimed by any person under any of the land laws of the United States, subject to the paramount title of the United States, shall be deemed in possession of such person for the purposes of RCW 16.12.090 through 16.12.110. [1888 c 115 § 3; RRS § 3102.]

### Chapter 16.13

#### HORSES, MULES, AND ASSES AT LARGE

##### Sections

|           |   |
|-----------|---|
| 16.13.010 | Horses, mules, asses not permitted at large.    |
| 16.13.020 | Public nuisance—Impounding.                     |
| 16.13.030 | Where impounded—Identifying animal.             |
| 16.13.040 | Notice of impounding—Publication—Copy to owner. |
| 16.13.050 | Owner to pay costs.                             |
| 16.13.060 | Sale of animal.                                 |
| 16.13.070 | Conduct of sale—Disposition of proceeds.        |
| 16.13.080 | Officer cannot purchase animal.                 |
| 16.13.090 | Penalties.                                      |

*Stallions and jacks at large: Chapter 16.16 RCW.*

**16.13.010 Horses, mules, asses not permitted at large.** It shall be unlawful for the owner of any horse, mule or ass to permit such animal to run at large and not under the care of a herder: *Provided*, That such animals may run at large upon lands belonging to the state or to the United States when the owner thereof has in writing been granted grazing privileges, and has filed a copy of such permit or certificate with the director of agriculture. [1951 c 31 § 1.]

**16.13.020 Public nuisance—Impounding.** Any horse, mule or ass running at large in violation of RCW 16.13.010 is declared to be a public nuisance, and shall be impounded by the sheriff of the county where found. [1951 c 31 § 2.]

**16.13.030 Where impounded—Identifying animal.** Upon taking custody of any animal, the sheriff shall cause it to be transported to and impounded at the nearest community livestock sales yard licensed under \*chapter 16.64 RCW. The sheriff shall forthwith notify the nearest brand inspector of the department of agriculture, who shall examine the animal and by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof. [1951 c 31 § 3.]

**\*Reviser's note:** Chapter 16.64 RCW was repealed by section 47, chapter 107, Laws of 1959. Later enactment, see chapter 16.65 RCW.

**16.13.040 Notice of impounding—Publication—Copy to owner.** The brand inspector shall cause to be published once in a newspaper published in the county where the animal was found, a notice of the impounding.

The notice shall state:

- (1) A description of the animal, including brand, tattoo or other identifying characteristics;
- (2) When and where found;
- (3) Where impounded; and
- (4) That if unclaimed, the animal will be sold at a community livestock sale, and the date of such sale: *Provided*, That if no newspaper shall be published in



such county, copies of the notice shall be posted at four commonly frequented places therein.

If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector, on or before the date of publication or posting, shall send a copy of the notice to the owner of record by registered mail. [1951 c 31 § 4.]

**16.13.050 Owner to pay costs.** Upon claiming any animal impounded under this chapter, the owner shall pay the costs of transportation and keep thereof. [1951 c 31 § 5.]

**16.13.060 Sale of animal.** If no person shall claim the animal within ten days after the date of publication or posting of the notice, it shall be sold at the next succeeding community livestock sale to be held at the sales yard where impounded. [1951 c 31 § 6.]

**16.13.070 Conduct of sale—Disposition of proceeds.** Sales of animals impounded under this chapter shall be governed by the provisions of Title 20 RCW. The proceeds of sale, after deducting the costs of sale, shall be impounded in the stray fund of the department of agriculture, and if no valid claim is made within one year from the date of sale, the director of the department of agriculture shall transfer the proceeds of sale to the brand fund of the department to be used for the enforcement of this chapter. [1951 c 31 § 7.]

**16.13.080 Officer cannot purchase animal.** No law enforcement officer shall, directly or indirectly, purchase any animal sold under the provisions of this chapter, or any interest therein. [1951 c 31 § 8.]

**16.13.090 Penalties.** Any person who shall violate the provisions of RCW 16.13.010 or 16.13.080 shall be guilty of a misdemeanor. [1951 c 31 § 9.]

## Chapter 16.16 STALLIONS AND JACKS AT LARGE

### Sections

|           |                                     |
|-----------|-------------------------------------|
| 16.16.010 | Running at large prohibited.        |
| 16.16.020 | Proof.                              |
| 16.16.030 | Notice—Removal.                     |
| 16.16.040 | Liability for damages.              |
| 16.16.050 | Gelding animals at large.           |
| 16.16.060 | Gelding animals at large—Exception. |

*Horses, mules, and asses at large: Chapter 16.13 RCW.*

**16.16.010 Running at large prohibited.** It shall be unlawful for the owner of stallions in this state to permit the same to run at large. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred and fifty dollars nor more than two hundred and fifty dollars, and one-half of the fine so enforced shall, in each case, be paid to the complaining witness: *Provided*, That this section will not apply to stallions running with and belonging to bands of horses which are herded and corralled by the owners once each day. [1895 c 124 § 1; RRS § 3085.]

*Liability for damages: RCW 16.16.040.*

**16.16.020 Proof.** In any prosecution under RCW 16.16.010 through 16.16.030 proof that the animal running at large is branded with the registered or known brand of the defendant shall be prima facie evidence that the defendant is the owner of said animal, and proof that said animal is found at large shall be prima facie evidence that the owner permitted the same to be at large. [1895 c 124 § 2; RRS § 3086.]

**16.16.030 Notice—Removal.** The complaining witness shall notify the owners of said animals, and a reasonable time shall be allowed for the removal of same. [1895 c 124 § 3; RRS § 3087.]

**16.16.040 Liability for damages.** If any stud horse, stud mule, jackass, ridgling or stag, while running at large out of the enclosed grounds of the owner or keeper, shall damage any other animal by biting or kicking him, or shall do any damage to person or property of any kind whatever, the owner of said stud horse, stud mule, jackass, ridgling or stag, shall be liable for all damages done by him. [Code 1881 § 2549; RRS § 3099.]

**16.16.050 Gelding animals at large.** It shall be lawful for any person to take up and geld, at the risk of the owner, within the months of April, May, June, July, August, and September, in any year, any stud horse, jackass, or stud mule, of the age of eighteen months and upwards, that may be found running at large out of the enclosed grounds of the owner or keeper, and if the said animal shall die the owner shall have no recourse against the person or persons who may have taken up and gelded, or caused to be gelded, the said animal, if the same has been done by a person in the habit of gelding, and the owner shall pay one dollar and a half therefor. [Code 1881 § 2547; 1871 p 90 § 4; RRS § 3088.]

*Castration of bulls: RCW 16.20.010.*

**16.16.060 Gelding animals at large—Exception.** It shall not be lawful for any person or persons to geld any animal knowing such animal is kept or intended to be kept for covering mares; and any person so offending shall be liable to the owner for all damages, to be recovered in any court having proper jurisdiction thereof; but if any owner or keeper of the covering animal shall wilfully or negligently suffer the said animal to run at large out of the enclosed grounds of said owner or keeper, any person may take the said animal and convey him to his owner or keeper, for which he shall receive three dollars per day, recoverable before any justice of the peace of the county. For the second offense six dollars per day, and for the third offense said animal may be taken up and gelded. [Code 1881 § 2548; 1871 p 90 § 4; RRS § 3089.]

**Chapter 16.20**  
**BULLS AT LARGE**

## Sections

|           |                                     |
|-----------|-------------------------------------|
| 16.20.010 | Castration of bulls at large.       |
| 16.20.020 | Bulls on open range to be purebred. |
| 16.20.030 | Proportion of bulls to cows.        |
| 16.20.040 | Penalty.                            |

**16.20.010 Castration of bulls at large.** It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of May, any bull above the age of ten months found running at large out of the enclosed grounds of the owner or keeper, and if the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: *Provided*, Such act of castration shall have been skillfully done by a person accustomed to doing the same: *And provided further*, That if the person so taking up or capturing such bull, or causing him to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that said animal is being kept for breeding purposes, it shall be his duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the keeping of said animal at the rate of fifty cents per day, and take and safely keep said animal thereafter within his own enclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay for such act of castration the sum of one dollar and fifty cents, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided, and the amount for which he may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof: *And provided further*, That if said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate him without giving any notice to the owner or keeper whatever. [1965 c 66 § 4; 1890 p 453 § 1; RRS § 3081.]

*Gelding of stallions and jacks: RCW 16.16.050.*

**16.20.020 Bulls on open range to be purebred.** It shall be unlawful for any person, firm, association or corporation to turn upon or allow to run upon the open range in this state any bull other than a registered purebred bull of a recognized beef breed. [1917 c 111 § 1; RRS § 3082.]

**16.20.030 Proportion of bulls to cows.** That before any person, firm, association or corporation shall turn upon the open range in this state any female breeding cattle of more than fifteen in number, two years old or over, they shall procure and turn with said female breeding cattle one registered purebred bull of recognized beef breed for every forty females or fraction thereof of twenty-five or over: *Provided, however*, That

RCW 16.20.020 through 16.20.040 shall not apply to counties lying west of the summit of the Cascade mountains. [1917 c 111 § 2; RRS § 3083.]

**16.20.040 Penalty.** Any person, firm, association or corporation violating any of the provisions of RCW 16.20.020 through 16.20.040 shall be guilty of a misdemeanor. [1917 c 111 § 3; RRS § 3084.]

**Chapter 16.24**  
**STOCK RESTRICTED AREAS**

## Sections

|           |   |
|-----------|---|
| 16.24.010 | Restricted areas authorized.                                |
| 16.24.020 | Hearing—Notice.   |
| 16.24.030 | Order establishing area—Publication.                        |
| 16.24.040 | Penalty.  |
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**16.24.010 Restricted areas authorized.** The board of county commissioners of any county of this state shall have the power to designate by an order made and published, as provided in RCW 16.24.030, certain territory as stock restricted area within such county in which it shall be unlawful to permit livestock of any kind to run at large: *Provided*, That no territory so designated shall be less than two square miles in area: *And provided further*, That RCW 16.24.010 through 16.24.065 shall not affect counties having adopted township organization. All territory not so designated shall be range area, in which it shall be lawful to permit livestock to run at large. [1937 c 40 § 1; 1911 c 25 § 1; RRS § 3068. Prior: 1907 c 230 § 1; 1905 c 91 § 1; R & B § 3166.]

**16.24.020 Hearing—Notice.** Within sixty days after the taking effect of RCW 16.24.010 through 16.24.065, the county commissioners of each of the several counties of the state may make an order fixing a time and place when a hearing will be had, notice of which shall be published at least once each week for two successive weeks in some newspaper having a general circulation within the county. It shall be the duty of the board of county commissioners at the time fixed for such hearing, or at the time to which such hearing may be adjourned, to hear all persons interested in the establishment of range areas or stock restricted areas as defined in RCW 16.24.010 through 16.24.065. [1937 c 40 § 2; 1923 c 33 § 1; 1911 c 25 § 2; RRS § 3069.]

**16.24.030 Order establishing area—Publication.** Within thirty days after the conclusion of any such hearing the county commissioners shall make an order describing the stock restricted areas within the county where livestock may not run at large, which order shall be entered upon the records of the county and published in a newspaper having general circulation in such county at least once each week for four successive

weeks. [1937 c 40 § 3; 1923 c 33 § 2; 1911 c 25 § 3; RRS § 3070.]

**16.24.040 Penalty.** Any person, or any agent, employee or representative of a corporation, violating any of the provisions of such order after the same shall have been published or posted as provided in RCW 16.24.030, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than two dollars, nor more than ten dollars, for each offense, and it shall be the duty of the prosecuting attorney of such county, on complaint of any resident or freeholder of said territory, to forthwith enforce the provisions of this section. [1911 c 25 § 4; RRS § 3071.]

**16.24.050 Change of boundaries.** When the county commissioners of any county deem it advisable to change the boundary or boundaries of any stock restricted area, a hearing shall be held in the same manner as provided in RCW 16.24.020. If the county commissioners decide to change the boundary or boundaries of any stock restricted area or areas, they shall within thirty days after the conclusion of such hearing make an order describing said change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in such county once each week for four successive weeks. [1937 c 40 § 4; 1923 c 93 § 1; RRS § 3070-1.]

**16.24.060 Road signs in range areas.** At the point where a public road enters a range area, and at such other points thereon within such area as the county commissioners shall designate, there shall be erected a road sign bearing the words: "RANGE AREA. WATCH OUT FOR LIVESTOCK." [1937 c 40 § 5; RRS § 3070-2.]

**16.24.065 Stock at large in areas—Unlawful.** No person owning or in control of any livestock shall wilfully or negligently allow such livestock to run at large in any stock restricted area, nor shall any person owning or in control of any livestock allow such livestock to wander or stray upon the right-of-way of any public highway lying within a stock restricted area when not in the charge of some person. [1937 c 40 § 6; RRS § 3070-3. Formerly RCW 16.24.070, part.]

*Stock at large on highway right-of-way—Unlawful—Impounding: RCW 16.24.070.*

**16.24.070 Stock at large on highway right-of-way—Unlawful—Impounding.** It shall be unlawful for any person to cause or permit any livestock to graze or stray upon any portion of the right-of-way of any public highway of this state, within any stock restricted area. It shall be unlawful for any person to herd or move any livestock over, along or across the right-of-way of any public highway, or portion thereof, within any stock restricted area, without having in attendance a sufficient number of persons to control the movement

of such livestock and to warn or otherwise protect vehicles traveling upon such public highway from any danger by reason of such livestock being herded or moved thereon.

In the event that any livestock is allowed to stray or graze upon the right-of-way of any public highway, or portion thereof, within any stock restricted area, unattended, the same may be impounded for safekeeping and, if the owner be not known, complaint may be instituted against such stock in a court of competent jurisdiction. Notice shall be published in one issue of a paper of general circulation published as close as possible to the location where the livestock were found, describing as nearly as possible the stock, where found, and that the same are to be sold. In the event that the owner appears and convinces the court of his right thereto, the stock may be delivered upon payment by him of all costs of court, advertising and caring for the stock. In the event no person claiming the right thereto shall appear by the close of business on the tenth day following and exclusive of the date of publication of notice, the stock may be sold at public or private sale, all costs of court, advertising and caring therefor paid from the proceeds thereof and the balance certified by the judge of the court ordering such sale, to the treasurer of the county in which located, to be credited to the county school fund. [1937 c 189 § 127; RRS § 6360-127, part. Prior: 1927 c 309 § 41, part; RRS § 6362-41, part. FORMER PART OF SECTION: 1937 c 40 § 6; RRS § 3070-3, now codified as RCW 16.24.065. Formerly RCW 16.24.070 and 16.24.080.]

**16.24.090 Swine not permitted at large.** The owner of swine shall not allow them to run at large at any time or within any territory, and any violation of this section shall render such owner liable to the penalties provided for in RCW 16.24.040: *Provided*, That swine may be driven upon the highways while in charge of sufficient attendants. [1911 c 25 § 5; RRS § 3072. Formerly RCW 16.12.010, part.]

*Swine may be driven on highway: RCW 16.12.080.*

*Unlawful to allow swine at large: RCW 16.12.010.*

## Chapter 16.28 ESTRAYS

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## CATTLE AND HOGS

**16.28.010 "Animal" defined.** The term "animal" as used in RCW 16.28.010 through 16.28.150 means cattle and hogs. [1957 c 22 § 2. Prior: 1951 c 31 § 10; 1919 c 148 § 1, part; 1907 c 45 § 1, part; 1905 c 23 § 3, part; 1886 p 125 § 1, part; Code 1881 § 2539, part; 1868 p 72 § 2, part; RRS § 3156, part.]

**16.28.020 Record of estrays.** It shall be the duty of the county sheriffs of the several counties of the state to keep a book of suitable dimensions to be called the "Record of estrays." The book shall be divided into two parts; the first part shall be designated "Estrays lost," and the second part "Estrays found." The part designated "Estrays lost," shall be ruled and spaced substantially as follows: The first column to contain the name of the owner; the second, his address; the third, the date lost or strayed; fourth, the kind of animal and age; fifth, the color; sixth, brands; seventh, earmarks; eighth, other marks of identification; ninth, customary range; tenth, page registered in "Estrays found." The part designated "Estrays found" shall be ruled and spaced substantially as follows: The first column to contain the name of the finder; the second, his address; third, the date found; the fourth, fifth, sixth, seventh, and eighth, columns to be the same as in "Estrays lost;" the ninth column to designate the place where the owner may claim and obtain the animal; and the tenth the page registered in "Estrays lost;" eleventh, the date sold; twelfth, to whom sold; thirteenth, price obtained; fourteenth, publication fee; fifteenth, other costs; sixteenth, balance. If the animal be breachy or vicious such fact shall also be noted in the third column. The part designated "Estray lost" shall be so arranged that the names of the owners shall be registered in alphabetical order, and thumb indexed so that each letter may be readily found. The part designated "Estray found," shall be so arranged, that the names of the finders will be registered in alphabetical order, and indexed as specified for the part designated "Estrays lost." In addition to the foregoing each portion of said two parts of said record of Estrays, shall contain an alphabetical index reference to the following: The age and kind of animal, the color, brands, earmarks; said index to refer to the page and the number of the line in which the particular animal is referred to. It shall be the duty of the sheriff of each county to keep said index up to date, and as complete as practicable. [1905 c 23 § 1; RRS § 3154.]

**Reviser's note:** Under Laws of 1905 c 23 it was the duty of the county auditor to keep the "Record of estrays". This duty was transferred to the county sheriff by Laws of 1945 c 84 § 1, which reads as follows: "The county auditors of the several counties of the state are

hereby directed to transfer and turn over to the county sheriffs of their respective counties all duties 'relating to estrays' and the book denominated 'Record of estrays'. Hereafter the county sheriffs of the several counties of the state shall keep, maintain and continue the 'Record of estrays' and shall perform and discharge all duties relating to estrays, as specifically described in sections 1 and 2, chapter 23, Laws of 1905 (sections 3154 and 3155, Remington's Revised Statutes, also Pierce's Perpetual Code 2641-1 to 11-25); section 3, chapter 23, Laws of 1905, as amended by section 1, chapter 148, Laws of 1919 (section 3156, Remington's Revised Statutes); section 4, chapter 23, Laws of 1905, as amended by section 1, chapter 31, Laws of 1943 (section 3157, Remington's Revised Statutes); section 5, chapter 23, Laws of 1905, as amended by section 1, chapter 122, Laws of Extraordinary Session, 1925 (section 3158, Remington's Revised Statutes); section 6, chapter 23, Laws of 1905 (section 3159, Remington's Revised Statutes); section 7, chapter 23, Laws of 1905 (section 3160, Remington's Revised Statutes); section 8, chapter 23, Laws of 1905 (section 3161, Remington's Revised Statutes); section 9, chapter 23, Laws of 1905, as amended by section 1, chapter 123, Laws of 1909 (section 3162, Remington's Revised Statutes); section 10, chapter 23, Laws of 1905 (section 3163, Remington's Revised Statutes); section 11, chapter 23, Laws of 1905, as amended by section 2, chapter 123, Laws of 1909 (section 3164, Remington's Revised Statutes); section 13, chapter 23, Laws of 1905 (section 3166, Remington's Revised Statutes)." [1945 c 84 § 1; Rem. Supp. 1945 § 3166-1.]

The word "sheriff" has thus been substituted for "auditor" in the restoration of RCW 16.28.010 through 16.28.150 (Laws of 1905 c 23).

**16.28.030 Registration of estrays by owner.** Any person losing an animal shall register the same with the county sheriff of his county under "Estrays lost," for which the sheriff shall collect a fee of fifty cents, for each animal registered, and deliver to the owner a receipt with his seal attached which receipt shall describe the animal registered. [1905 c 23 § 2; RRS § 3155.]

**16.28.040 Registration by finder.** Any person about whose premises any animal may be in the habit of running at large at any time between the first day of October and the first day of March east of the Cascade range and between the first day of December and the first day of March, west of the Cascade range, and at any time of the year within a district in which livestock shall not run at large, established as provided by RCW 16.24.030, may take up such animal and shall within ten days thereafter cause the same to be registered with the sheriff of his county under "Estrays found," giving the information required by the record as fully as practicable, and the sheriff shall charge against such estrays the said fee of fifty cents for each animal so registered. Breachy or vicious animals may be taken up and registered as herein provided. [1957 c 22 § 3. Prior: 1919 c 148 § 1, part; 1907 c 45 § 1, part; 1905 c 23 § 3, part; 1886 p 125 § 1; Code 1881 § 2539, part; 1868 p 72 § 2, part; RRS § 3156, part.]

**16.28.050 Registering of presumed estrays.** Any person knowing of any animal running at large in any month, which he believes to be an estray, may take the same into his possession and register the same as found, or may register the same without taking the animal into his possession by specifying the range where the owner may be likely to find the same, but no charges shall be allowed any finder for taking or keeping such animal and no such animal shall be advertised for sale between the first day of March and the first day of October, except breachy or vicious animals, or estrays taken up prior to said first day of March, as herein provided. The

several county sheriffs shall make no charge for registering estrays as found between the first day of March and the first day of October. [1905 c 23 § 13; RRS § 3166.]

**16.28.060 Notice to owner—Form.** Immediately upon registering any animal as found, the sheriff shall examine the record of "Estrays lost" and if the animal found appears thereon, or if the animal bears a brand, the sheriff shall inquire of the state director of agriculture as to the record ownership of said brand, and if the animal found appears in the record of "Estrays lost" or [is] found to have a registered brand the sheriff shall immediately notify the owner by mailing him a notice addressed to the post office designated opposite his name on the record, which notice shall contain the information appearing in the fourth, fifth, sixth, seventh and eighth columns of the record, and shall require the owner to appear within twenty days from the date of such notice and pay all charges and take the said animal into his possession.

The several county sheriffs shall keep on hand blank forms of such notice which shall be substantially as follows: -----

To -----, Washington.

You are hereby notified that your (here state the kind of animal), color -----, branded -----, earmarks -----, otherwise marked -----, has been taken up and by -----, and is now at ----- and unless you pay all charges against the said estray, and take possession thereof within twenty days from this date, the same will be sold according to law.

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

P.O. Address -----

----- Sheriff.

[1943 c 31 § 1; 1905 c 23 § 4; RRS § 3157.]

**16.28.070 Payment of fee—Repossession.** The owner of any estray upon learning that the same has been found, shall pay to the sheriff the fee for registering the estray as found, and take his receipt therefor with his official seal attached, which receipt shall describe the animal registered, and upon exhibiting such receipt and making out his title, and paying the finder the sum of one dollar for taking up the animal and reporting the same to the sheriff, and the further sum of thirty cents per day for keeping the estray, from the time of registering the same as found, shall be allowed to take possession of the animal. The claimant's possession of the sheriff's receipt showing payment of the fee for registering the same as lost, and of the sheriff's receipt, showing payment of the fee for registering the same as found, shall be proof of ownership sufficient to justify the finder in surrendering possession of the estray. Any taker-up of an estray who shall work such animal, or otherwise use the same to derive benefit therefrom shall forfeit all pay for the keep thereof. [1925 ex.s. c 122 § 1; 1919 c 148 § 2; 1905 c 23 § 5. Prior: 1886 p 125 § 2; Code 1881 c 2540; 1868 p 72 § 3; 1854 p 381 § 5.]

**16.28.080 Sale of estrays.** If the person entitled to the possession of an estray shall not appear and make out his title thereto as herein provided, and pay the charges against the same as herein specified within twenty days from the time it is registered as found, as provided in RCW 16.28.010 through 16.28.150, it shall be the duty of the sheriff to immediately publish notice once a week for two consecutive weeks, in the paper doing the county printing, which notice shall give the name of the finder of the estray, the date when taken up, place where kept, description of the animal as shown by the record, and shall state that if the owner does not appear and make out his title and pay all charges against said estray on or before the day and hour fixed for such sale, which shall be stated in the notice, and which shall not be less than fifteen nor more than twenty days from the date of the first publication thereof, such estray will be sold at the place where kept to the highest bidder for cash. If the owner or his legal representative appear he shall pay all charges incurred up to the time of his appearance including publication fee, and sheriff's or constable's fees if any have been incurred. [1905 c 23 § 7; RRS § 3160. Prior: 1886 p 125 § 3, part; Code 1881 § 2543, part; 1868 p 72 § 6, part; 1854 p 381 § 7, part. FORMER PART OF SECTION: 1905 c 23 § 8; RRS § 3161, now codified as RCW 16.28.085.]

**16.28.085 Sale of estrays—Notice.** Such notice for publication may be substantially as follows:

ESTRAY SALE

Notice is hereby given that (name of finder) on the ----- day of -----, 19--, took up and now keeps at ----- Washington, (kind and age of animal), branded -----, earmarked -----, otherwise marked -----, and said estray will be sold to the highest bidder for cash, at the place kept, as above specified, on ----- the ----- day of -----, 19--, at the hour of ----- o'clock in the ----- noon of said day, unless the owner thereof or his legal representatives shall appear prior to that time and make out his title, and pay all charges against said estray.

Date of the first publication of this notice -----, 19--

-----  
Sheriff of ----- County.

[1905 c 23 § 8; RRS § 3161. Formerly RCW 16.28.080, part.]

**16.28.090 Sale of several estrays by one notice.** In any community where any number of estrays are registered as found at or near the same time, all such estrays may be advertised for sale by the sheriff in the same notice, by describing each animal. It shall be the duty of the county sheriff to specify in said notice the place where the sale is to take place, and any person holding any estray or estrays so advertised shall take the same to the place specified in said notice so that the same may be sold as provided in RCW 16.28.010 through 16.28.150. [1909 c 123 § 1; 1905 c 23 § 9; RRS § 3162.]

**16.28.100 Sale—Fees for selling.** At the time stated in such notice, the sheriff or any constable, or any elector, other than the finder, deputized by the sheriff for such purpose shall sell the same at public auction for cash to the highest bidder, and the finder may bid therefor at such sale, and after deducting all charges of the finder as herein provided, and the fees of the sheriff or constable for selling, which shall be the same as a sale on execution the remainder of the proceeds shall be turned into the sheriff within ten days, by the party conducting the sale: *Provided*, That if any person other than the sheriff or a constable conducts such sale no fees for selling shall be allowable. [1905 c 23 § 10; RRS § 3163.]

**16.28.110 Estrays may be registered in more than one county.** Any owner or finder of any estray may register the same as lost or found in any one or more counties of the state, but the sale must be in the county where the estray is taken up, and the finder shall pay the registration fee outside the county where the estray is taken up. [1905 c 23 § 14; RRS § 3167.]

**16.28.120 Redemption.** If the owner of the property sold, or his legal representative, within six months after the sale shall have been made, furnish satisfactory evidence to the sheriff of the ownership of the said property, he or they shall be entitled to redeem said property upon the payment of all costs incurred in connection therewith. Any person buying an estray at a sale had under the provisions of RCW 16.28.010 through 16.28.150 shall be vested with an absolute title to the same after six months from the date of such sale, unless notified by the sheriff of the redemption of same by its owner or his legal representative. [1909 c 123 § 2; 1905 c 23 § 11. Prior: 1886 p 125 § 3, part; Code 1881 § 2543, part; 1868 p 72 § 6, part; 1854 p 381 § 5; 1 H. C. § 2540, part.]

**16.28.130 Publication fees.** The publisher's fees for publishing the notices specified herein, shall be paid for in the manner and at the rate provided for the publication of the proceedings of the county commissioners. [1905 c 23 § 12; RRS § 3165.]

*County printing: Chapter 36.72 RCW.*

**16.28.140 Disposition of fees and proceeds of sales.** All fees collected by the sheriff hereunder, and all sums derived from estray sales shall be turned into the current expense fund of the county. [1905 c 23 § 6; RRS § 3159.]

**16.28.150 Penalty.** If any person shall take up, keep or use any estray without complying with the provisions of RCW 16.28.010 through 16.28.150, he shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not to exceed one hundred dollars. [1905 c 23 § 15; RRS § 3168. Prior: Code 1881 § 2544; 1868 p 72 § 7.]

## SEPARATING ESTRAYS FROM HERD

**16.28.160 Separating estrays from herd—Penalty—Payment of fine to school fund—Remittance of justice court fines, penalties, fees and forfeitures.** It shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral in which they may be driven before setting the herd at large. Any person violating this section shall be deemed guilty of a misdemeanor, and on conviction thereof, before a justice of the peace, shall be fined in any sum not exceeding one hundred dollars, and half the costs of prosecution; said fine so recovered to be paid into the school fund of the county in which the offense was committed; and in addition thereto shall be imprisoned until the fine and costs are paid: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 14; Code 1881 § 2537; RRS § 3050. Prior: 1869 pp 408, 409 §§ 1, 2.]

**16.28.165 Moving another's stock from range.** That no person shall be permitted to lead, drive, or in any manner remove any horse, mare, colt, jack, jenny, mule, or any head of neat cattle, or hog, sheep, goat, or any number of these animals, the same being the property of another person, from the range on which they are permitted to run in common, without the consent of the owner thereof first had and obtained: *Provided*, The owner of any such animals, as aforesaid, finding the same running on the herd grounds or on common range with other animals of the same, may be permitted to drive his own animal or animals, together with such other animals as he cannot conveniently separate from his own, to the nearest and most convenient corral, or other place for separating his own from other animals, if he in such case, immediately with all convenient speed, drive all such animals not belonging to himself back to the herd ground or range from which he brought such animals. [1891 c 12 § 1; RRS § 3048. Formerly RCW 16.28.170, part.]

**16.28.170 Moving another's stock from range—Penalty.** Any person violating the provisions of RCW 16.28.165 shall be guilty of a misdemeanor, and on conviction thereof shall be punishable by a fine of not less than twenty nor exceeding five hundred dollars, or imprisonment not exceeding six months nor less than thirty days, or both such fine and imprisonment, discretionary with the court having jurisdiction of the same. [1891 c 12 § 2; RRS § 3049. FORMER PART OF SECTION: 1891 c 12 § 1; RRS § 3048, now codified as RCW 16.28.165.]

**Chapter 16.36**  
**DISEASES—QUARANTINE—GARBAGE**  
**FEEDING**

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**16.36.005 Definitions.** As used in RCW 16.36.020 and RCW 16.36.103 through 16.36.110:

"Director" means the director of agriculture of the state of Washington or his authorized representative.

"Department" means the department of agriculture of the state of Washington.

"Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products. [1953 c 17 § 1.]

**16.36.010 "Quarantine" defined.** The word "quarantine" as used in \*this act shall mean the placing and restraining of any animal or animals by the owner or agents in charge thereof, either within a certain described and designated enclosure or area within this state, or the restraining of any such animal or animals from entering this state, as may be directed in writing by the director of agriculture, or his duly authorized representative. Any animal or animals so quarantined within the state shall at all times be kept separate and apart from other domestic animals and not allowed to have anything in common therewith. [1927 c 165 § 2; RRS § 3111. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

\*Reviser's note: "this act", chapter 165, Laws of 1927, as amended, has been codified as chapters 16.36, 16.40 and 16.44 RCW. These chapters also contain two sections which were enacted as independent sections (1953 c 17 § 1, RCW 16.36.005; and 1937 c 146 § 2, RCW 16.40.110), and seven sections which were expressly added to chapter 16.36 RCW (1953 c 17 §§ 3, 4, 5, 6 and 7, RCW 16.36.103 through 16.36.110; 1957 c 160 § 2, RCW 16.36.095 and 1963 ex. s. c 8, RCW 16.36.096).

**16.36.020 Powers of director.** The director of agriculture shall have general supervision of the prevention of the spread and the suppression of infectious, contagious, communicable and dangerous diseases affecting the domestic animals within, in transit through, and, by means of the division of dairy and livestock, may establish and enforce quarantine of and against any and all domestic animals which have been fed garbage or which are affected with any such disease or that may have been exposed to others thus affected, whether within or without the state, for such length of time as he deems necessary to determine whether any such animal is infected with any such disease. The director shall also enforce and administer the provisions of RCW 16.36.005, 16.36.020, 16.36.103, 16.36.105, 16.36.107, 16.36.108, 16.36.109 and 16.36.110, and when garbage has been fed to swine he may require the disinfection of all facilities, including yard, transportation and feeding facilities, used for keeping such swine. [1953 c 17 § 2; 1947 c 172 § 1; 1933 c 177 § 1; 1927 c 165 § 1; formerly Rem. Supp. 1947 § 3110. Prior: 1915 c 100 § 5; 1901 c 112 § 2; 1895 c 167 § 2.]

**16.36.030 Breaking quarantine—Penalty.** It shall be unlawful for the owner or owners of any domestic animal quarantined, or their agents or employees, to fail to place the quarantined animals within the certain described and designated enclosure or area within this state, to break such quarantine or to move, or allow to be moved, any such animal from within the quarantined area, or across the quarantined line, as established, or to sell, exchange or in any other way part with the products of such animals, without first obtaining a permit in writing from the director of agriculture, or his duly authorized representative. Any owner or owners of any quarantined animal or any agent of such owner or owners, who fails to comply with or violates any such quarantine or who negligently allows any such quarantined animal to escape from quarantine, and any other person who removes any quarantined animal from such quarantine shall be guilty of a misdemeanor. [1947 c 172 § 2; 1927 c 165 § 3; Rem. Supp. 1947 § 3112. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

**16.36.040 Rules and regulations—Intercounty embargoes.** The director of agriculture shall have power to promulgate and enforce such reasonable rules, regulations and orders as he may deem necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable or dangerous diseases affecting domestic animals in this state, and to promulgate and enforce such reasonable rules, regulations and orders as he may deem necessary or proper governing the inspection and test of all domestic animals within or about to be imported into this state, and to promulgate and enforce intercounty embargoes and quarantine to prevent the shipment, trailing, trucking, transporting or movement of bovine animals from any county that has not been declared modified accredited by the United States bureau of animal industry for tuberculosis and/or Bang's disease, into a county which has been



declared modified accredited by the United States bureau of animal industry for tuberculosis and/or Bang's disease, unless such animals are accompanied by a negative certificate of tuberculin test made within sixty days and/or a negative Bang's test made within ten days, last prior to the movement of such animal into such county, issued by a duly authorized veterinary inspector of the state department of agriculture, or of the United States bureau of animal industry, or an accredited veterinarian authorized by permit issued by the director of agriculture to execute such certificate. [1947 c 172 § 3; 1927 c 165 § 4; Rem. Supp. 1947 § 3113. Prior: 1915 c 100 § 4; 1901 c 112 § 2; 1895 c 167 § 2.]

**16.36.050 Importation—Health certificates—Permits—Exceptions.** It shall be unlawful for any person, or any railroad or transportation company, or other common carrier, to bring into this state for any purpose any domestic animals without first having secured an official health certificate, certified by the state veterinarian of origin that such animals meet the health requirements promulgated by the director of agriculture of the state of Washington, and without having obtained a permit so to do from the director of agriculture or his duly authorized representative: *Provided*, That this section shall not apply to domestic animals imported into this state for immediate slaughter, or domestic animals imported for the purpose of unloading for feed, rest, and water, for a period not in excess of twenty-eight hours except upon prior permit therefor secured from the director of agriculture. It shall be unlawful for any person to divert en route for other than to a federal inspected stockyard for immediate slaughter or to sell for other than immediate slaughter or to fail to slaughter within fourteen days after arrival, any animal imported into this state for immediate slaughter. It shall be unlawful for any person, railroad, transportation company, or other common carrier, to keep any domestic animals which are unloaded for feed, rest and water in other than quarantined pens, or not to report any missing animals to the director of agriculture at the time the animals are reloaded. [1947 c 172 § 4; 1927 c 165 § 5; Rem. Supp. 1947 § 3114. Prior: 1915 c 100 § 7; 1905 c 169 § 1; 1903 c 125 § 1.]

**16.36.060 Obstructing enforcement, unlawful—Tests.** It shall be unlawful for any person to wilfully hinder, obstruct or resist the director of agriculture or any duly authorized representative, or any peace officer acting under him or them, when engaged in the performance of the duties or in the exercise of the powers conferred by this act, and it shall be unlawful for any person to wilfully fail to comply with or violate any rule, regulation or order promulgated by the director of agriculture or his duly authorized representatives under the provisions of this act. The director of agriculture shall have the authority under such rules and regulations as shall be promulgated by him to make tests on any domestic animals for diseased conditions, and it shall be unlawful for any person to interfere with such tests in any manner, or to violate any segregation or identification order made in connection with such tests

by the director of agriculture, or his duly authorized representative. [1947 c 172 § 5; 1927 c 165 § 6; Rem. Supp. 1947 § 3115. Prior: 1895 c 167 § 3.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.36.070 Danger of infection—Emergencies.** Whenever a majority of any board of health, board of county commissioners, city council or other governing body of any incorporated city or town, or trustees of any township, whether in session or not, shall, in writing or by telegraph, notify the director of agriculture of the prevalence of or probable danger of infection from any of the diseases of domestic animals the director of agriculture personally, or by the supervisor of dairy and livestock, or by a duly appointed and deputized veterinarian of the division of dairy and livestock, shall at once go to the place designated in said notice and take such action as the exigencies may in his judgment demand, and may in case of an emergency appoint deputies or assistants, with equal power to act. The compensation to be paid such emergency deputies and assistants, shall be fixed by the director of agriculture in conformity with the standards effective in the locality in which the services are performed. [1947 c 172 § 6; 1927 c 165 § 7; Rem. Supp. 1947 § 3116. Prior: 1895 c 167 § 4.]

**16.36.080 Veterinarians to report diseases.** It shall be unlawful for any person registered to practice veterinary medicine, surgery and dentistry in this state not to immediately report in writing to the director of agriculture the discovery of the existence or suspected existence among domestic animals within the state of any reportable diseases as published by the director of agriculture. [1947 c 172 § 7; 1927 c 165 § 8; Rem. Supp. 1947 § 3117.]

**16.36.090 Destruction of diseased animals.** Whenever in the opinion of the director of agriculture, upon the report of the supervisor or a duly appointed and qualified veterinarian of the division of dairy and livestock, the public welfare demands the destruction of any animal found to be affected with any infectious, contagious, communicable or dangerous disease, he shall be authorized to, by written order, direct such animal to be destroyed by or under the direction of the supervisor or a duly appointed and qualified veterinarian of the division of dairy and livestock. [1947 c 172 § 8; 1927 c 165 § 9; Rem. Supp. 1947 § 3118. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

**16.36.095 Director may condemn diseased bovine animals—Indemnity.** The director of agriculture may condemn for slaughter any bovine animals which are infected with a highly contagious or communicable disease, other than tuberculosis and Bang's disease, and pay indemnity therefor in accordance with the provisions of RCW 16.40.080: *Provided*, That the director shall first ascertain that the best interests of the livestock industry and general public will be served thereby. [1957 c 160 § 2.]

**16.36.096 State-federal cooperation against diseases—Slaughter—Indemnities.** The director of agriculture, in order to protect the public health and welfare, may enter into cooperative programs with the federal government or agencies thereof for the prevention or eradication of any contagious, infectious, or communicable disease which is affecting or which may affect the health of the animal population of this state.

The director of agriculture, upon entering into such cooperative programs for the prevention or eradication of such a disease, may order the slaughter or destruction of any animal affected with or exposed to such a disease and pay indemnities to the owner of such animal. The payment of indemnities provided for in this section shall be applicable only to animals condemned or slaughtered pursuant to the provisions of this section and shall not be applicable when the director of agriculture orders the condemnation and slaughter of any animal under any other provision of this chapter or any other law of the state. The director of agriculture may pay an indemnity in an amount not to exceed fifty percent of the value of the animal ordered slaughtered or destroyed and such amount shall not exceed one hundred dollars, less any salvage value accruing to the owner of the animal slaughtered or destroyed: *Provided*, That the provisions of this section shall be applicable only when the cooperating agency agrees to pay an amount equal to the amount the director of agriculture has ordered paid to such owner or any amount in excess of such amount up to at least fifty percent of the difference between the appraised value of the animal ordered destroyed or slaughtered and any amount received by the owner of such animal as salvage.

In ordering the slaughter or destruction of any animals pursuant to this section, the provisions for payment of indemnity shall not apply to animals (1) belonging to the federal government or any of its agencies, this state or political subdivision thereof, or any municipal corporation; and (2) to any animals which have been brought into this state and have been in this state for a period of less than six months before being ordered slaughtered or destroyed by the director of agriculture. [1963 ex.s. c 8 § 1.]

**16.36.100 Cooperation with federal government.** The governor and the director of agriculture shall have the power to cooperate with the government of the United States in the prevention and eradication of diseases of domestic animals and the governor shall have the power to receive and receipt for any moneys receivable by this state under the provisions of any act of congress and pay the same into the hands of the state treasurer as custodian for the state to be used and expended in carrying out the provisions of \*this act and the act or acts of congress under which said moneys are paid over to the state. [1927 c 165 § 10; RRS § 3119. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

\*Reviser's note: "this act", see note following RCW 16.36.010.

**16.36.103 Swine—Treatment of garbage—Investigation of premises.** All garbage before being fed to swine shall be thoroughly heated to at least two hundred and twelve degrees fahrenheit for at least thirty minutes in equipment and by methods approved by the director. The director may enter at reasonable times upon any private or public property for the purpose of investigating conditions relating to the treating of garbage to be fed to swine. [1953 c 17 § 3.]

**16.36.105 Swine, garbage feeding, license—Fee.** No person shall feed garbage to swine without first securing a license therefor from the department of agriculture. The license shall be renewed on the thirtieth of June of each year. Application therefor shall be accompanied by a license fee of ten dollars which shall be returned to the applicant if the license is denied, or credited to the general fund if the license is granted. The license is nontransferable and a separate license shall be required for each place of business if an operator has more than one feeding station. [1953 c 17 § 4.]

*Feeding of carcasses to swine: RCW 16.68.150.*

**16.36.107 Swine, garbage feeding, license—Application—Inspection—Facilities required.** Upon receipt of an application for a license to feed garbage, the director shall cause an inspection to be made of the premises to determine that the location, construction and facilities meet the following requirements and any rules or regulations on sanitation which may be hereafter promulgated:

(1) Feeding platforms must be constructed of impervious material which must be kept reasonably clean at all times with provision for the proper disposal of all refuse to prevent fly breeding, harboring of rats or other insanitary conditions.

(2) Ample water supply under pressure must be provided to properly clean the feeding area and an approved drainage system must be provided for all cleaning operations. [1953 c 17 § 5.]

**16.36.108 Swine, garbage feeding, license—Denial or revocation.** Upon failure to comply with any of the provisions of RCW 16.36.005, 16.36.020, 16.36.103, 16.36.105, or 16.36.107, or any rules or regulations promulgated under chapter 16.36 RCW, the director may revoke such license or refuse to issue a license to an applicant after first giving the licensee or applicant an opportunity to be heard in regard to the violation. [1953 c 17 § 6.]

**16.36.109 Swine, garbage feeding, license—Exemptions.** RCW 16.36.103, 16.36.105, 16.36.107 and 16.36.108 shall not apply to any person feeding garbage from his own domestic household. [1953 c 17 § 7.]

**16.36.110 Penalty—Injunction.** A violation of or a failure to comply with any provision of this chapter shall be a misdemeanor. Each day upon which a violation occurs shall constitute a separate violation. Any

person violating the provisions of RCW 16.36.005, 16.36.020, 16.36.103, 16.36.105, 16.36.107, 16.36.108 or 16.36.109 may be enjoined from continuing such violation. [1957 c 22 § 5. Prior: 1953 c 17 § 8; 1927 c 165 § 33; RRS § 3142.]

### Chapter 16.38 LIVESTOCK DISEASES—DIAGNOSTIC SERVICE PROGRAM

#### Sections

- 16.38.010 Declaration of purpose.
- 16.38.020 Director authorized to carry on diagnostic program.
- 16.38.030 Employment of personnel.
- 16.38.040 Agreements and/or contracts with other entities.
- 16.38.050 Acceptance of gifts, funds, equipment, etc.
- 16.38.060 Schedule of fees may be established.

**16.38.010 Declaration of purpose.** The production of livestock is one of the largest industries in this state; and whereas livestock disease constitutes a constant threat to the public health and the production of livestock in this state; and whereas the prevention and control of such livestock diseases by the state may be best carried on by the establishment of a diagnostic service program for livestock diseases; therefore it is in the public interest and for the purpose of protecting health and general welfare that a livestock diagnostic service program be established. [1969 c 100 § 1.]

**16.38.020 Director authorized to carry on diagnostic program.** The director of agriculture is hereby authorized to carry on a diagnostic service program for the purpose of diagnosing any livestock disease which affects or may affect any livestock which is or may be produced in this state or otherwise handled in any manner for public distribution or consumption. [1969 c 100 § 2.]

**16.38.030 Employment of personnel.** In carrying out such diagnostic service program the director of agriculture may employ, subject to the state civil service act, chapter 41.06 RCW, the necessary personnel to properly effectuate such diagnostic service program. [1969 c 100 § 3.]

**16.38.040 Agreements and/or contracts with other entities.** In carrying out such diagnostic service program the director of agriculture may enter into agreements and/or contracts with any other governmental agencies whether state or federal or public institution such as Washington State University or private institutions and/or research organizations. [1969 c 100 § 4.]

**16.38.050 Acceptance of gifts, funds, equipment, etc.** In carrying out such diagnostic service program, the director of agriculture may accept public or private funds, gifts or equipment or any other necessary properties. [1969 c 100 § 5.]

**16.38.060 Schedule of fees may be established.** The director may, following a public hearing, establish a schedule of fees for services performed in carrying out such diagnostic service program. [1969 c 100 § 6.]

### Chapter 16.40 TUBERCULOSIS AND BANG'S DISEASE CONTROL

#### Sections

- 16.40.010 Examinations and tests—Inspectors—Quarantine.
- 16.40.060 Option of indemnity or quarantine—Slaughter of condemned animals—Post mortem—Indemnity payments—Test requisites.
- 16.40.100 Slaughtering limited by appropriation.
- 16.40.110 Funds from United States—Agreements.
- 16.40.120 Exhibitors—Health certificates.
- 16.40.130 Penalty.

*Diseased animals, sale, etc.: RCW 9.08.020.*

**16.40.010 Examinations and tests—Inspectors—Quarantine.** The director of agriculture of the state shall cause all bovine animals within the state to be examined and tested for the presence or absence of tuberculosis and/or Bang's disease, and such other tests necessary to prevent the spread of communicable diseases among livestock. Such tests and examinations shall be made under the supervision of the director of agriculture by any duly authorized veterinary inspector of the department of agriculture, such tests to be made in such manner, and at such reasonable and seasonable times, and in such counties or localities as the director of agriculture may from time to time prescribe.

The giving of such tests and examinations shall commence immediately upon the taking effect of this act in any county or counties which the director of agriculture may select: *Provided, however,* That the owners of a majority of the bovine animals in any county, as shown by the last assessment roll in such county, may petition the director of agriculture to have the bovine animals in the county of their residence tested and examined forthwith, said petition to be filed with the county auditor in the county where such animals are located, and it shall be the duty of the county auditor of such county immediately upon the filing of such a petition to forward to the director of agriculture a certified copy of such petition. The director of agriculture upon receipt of the first petition so filed shall immediately cause the bovine animals in such county to be tested, and tuberculin and/or Bang's disease tests in other counties shall be made under the direction of the director of agriculture in the order in which said petitions are filed as herein provided except when in the opinion of the director of agriculture an emergency exists, by reason of the outbreak of contagious or infectious diseases of animals, and in such event all or any portion of the tests being conducted in the state may be suspended until such time as the director of agriculture shall decide that such emergency no longer exists, and in such event the testing and examinations herein mentioned shall be renewed.

In the event that no petition to have tuberculin and/or Bang's disease tests of bovine animals made is filed with the county auditor, as herein provided, or in the event that such tests, in the counties having petitioned for such tests, as herein prescribed, are completed, the director of agriculture shall designate in what counties or localities such tests shall be made.

Whenever the owner of any untested bovine animal within the state refuses to have his bovine animal or animals tested then the director of agriculture may order the premises or farm on which such untested animal or animals is harbored to be put in quarantine, so that no domestic animal shall be removed from or brought to the premises quarantined, and so that no products of the domestic animals on the premises so quarantined shall be removed from the said premises.

Every inspector and veterinarian of the department of agriculture making examinations and tests, as provided in this section, shall be a veterinarian duly licensed to practice veterinary medicine, surgery and dentistry in this state: *Provided*, That the veterinary inspectors of the United States bureau of animal industry, may be appointed by the director of agriculture to make such examinations and tuberculin tests as herein provided, and when so employed they shall act without compensation, and shall possess the same power and authority in this state as a veterinary inspector of the department of agriculture.

Should the owner or owners of any bovine animals desire to select a duly licensed and accredited veterinarian, approved by the director of agriculture, for making such examination and tests in accordance with the provisions of this act, the owner or owners shall pay all expenses in connection with such examinations and tests. [1959 c 161 § 1; 1947 c 172 § 9; 1929 c 210 § 1; 1927 c 165 § 11; Rem. Supp. 1947 § 3120. Prior: 1925 ex.s. c 198 § 1; 1923 c 73 § 1; 1919 c 192 § 89; 1915 c 100 § 1. Formerly RCW 16.40.010, 16.40.020, 16.40.030, 16.40.040 and 16.40.050.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.40.060 Option of indemnity or quarantine—Slaughter of condemned animals—Post mortem—Indemnity payments—Test requisites.** If, on the completion of any examination and test as provided in RCW 16.40.010, the inspector or veterinarian making the examination and test, shall believe that the animal is infected with tuberculosis or Bang's disease, the owner of the animal shall have, with the approval of the director of agriculture or his representative, the option of indemnity or quarantine; if the owner selects indemnity he shall market the animal within thirty days from the date of condemnation. All bovine animals which have shown a suspicious reaction to the test on three successive tests for tuberculosis or Bang's disease and are held as suspects may be slaughtered under the provisions of this act at the option of the owner and approval of the director or his representative and the owner shall have a valid claim for indemnity to the same extent and in the same amount as for bovine animals which give a positive reaction to the above test. The animal or animals shall be slaughtered under the supervision of a veterinary inspector of the department of agriculture, or the United States bureau of animal industry, or a veterinarian duly licensed to practice veterinary medicine, surgery and dentistry in this state. The veterinary inspector or veterinarian shall hold a post mortem examination and determine whether or not the animal shall

be passed to be used for food. The post mortem examination must conform with the meat inspection regulations of the United States bureau of animal industry. Upon the receipt of the post mortem report and if the owner has complied with all lawful quarantine laws and regulations, the director of agriculture shall cause to be paid to the owner or owners of the animals an amount not exceeding twenty-five dollars for any grade female, or more than fifty dollars for any purebred registered bull or female, or such portion thereof as would represent an equitable and agreed amount of the contribution of the state of Washington as determined by the director of agriculture and representatives of the United States bureau of animal industry, and in no case shall any indemnity be paid for grade bulls, for steers, or spayed females, and the state shall not be required to pay the owner of any animal imported into this state within six months prior to the inspection and test, the sums hereinabove provided for, but the owner of such slaughtered animal: *Provided*, That the right to indemnity shall not exist nor shall payment be made for any animal owned by the United States, this state, or any county, city, town or township in this state: *And provided further*, That no bovine animal shall be condemned for tuberculosis without having been first subjected to the tuberculin test and a positive reaction has resulted and no bovine animal shall be condemned for Bang's disease unless it has been subjected to a blood agglutination test in dilutions of serum to antigen of one to fifty (1:50), one to one hundred (1:100), and one to two hundred (1:200), by an approved laboratory, and a positive reaction for Bang's disease has resulted. [1947 c 172 § 10; 1939 c 196 § 1; 1937 c 146 § 1; 1927 c 165 § 12; Rem. Supp. 1947 § 3121. Prior: 1925 ex.s. c 198 § 2; 1923 c 73 § 2; 1919 c 192 § 90; 1915 c 100 § 2. Formerly RCW 16.40.060, 16.40.070, 16.40.080 and 16.40.090.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

*Director may condemn bovines infected with other diseases:* RCW 16.36.095.

**16.40.100 Slaughtering limited by appropriation.** Whenever any appropriation made by the legislature for the purpose of carrying out the provisions of RCW 16.40.010 and 16.40.060 during any biennium shall be exhausted, no further animals shall be slaughtered under the provisions of said sections. [1927 c 165 § 13; RRS § 3122. Prior: 1915 c 100 § 3.]

**16.40.110 Funds from United States—Agreements.** There is hereby appropriated from the general fund of the state treasury the sum of two hundred thousand dollars, to pay the indemnities, to the owners of cattle slaughtered as provided in this act. The governor and the director of agriculture are hereby authorized to obtain additional funds from the United States secretary of agriculture, and enter into agreements with the said secretary for the disbursement of the funds granted by the United States government. [1937 c 146 § 2; RRS § 3121-1.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.40.120 Exhibitors—Health certificates.** It shall be unlawful for any person to exhibit at any state, county, district or other fair, or any livestock exhibition within this state, any domestic animal unless a health certificate for said animal has been approved by the director of agriculture or his representative. [1947 c 172 § 11; 1933 c 177 § 2; 1927 c 165 § 15; Rem. Supp. 1947 § 3124. Prior: 1921 c 77 § 1.]

**16.40.130 Penalty.** Every person who shall violate or fail to comply with any of the provisions of this chapter for which violation or failure to comply no specific penalty is provided in this chapter shall be deemed guilty of a misdemeanor. [1957 c 22 § 6. Prior: 1927 c 165 § 33; RRS § 3142.]

### Chapter 16.44 DISEASES OF SHEEP

#### Sections

- 16.44.020 Duty to inspect sheep—Quarantine—Certificate to transfer—Expenses under quarantine—Oaths.
- 16.44.030 Out of state infection—Importation prohibited—Proclamation—Penalty.
- 16.44.040 Cooperation with federal agency—Manner of treatment.
- 16.44.045 Authority to inspect, quarantine and treat sheep.
- 16.44.050 Quarantine areas—Penalty for breaking.
- 16.44.060 Scabies—Dipping—Certificate of health.
- 16.44.070 Quarantine of entire flock—Dipping—Notice—Penalty.
- 16.44.080 Refusal to dip—Seizure—Cost.
- 16.44.090 Expense—Lien—Foreclosure.
- 16.44.100 Moving infected sheep—Permit—Damages—Penalty.
- 16.44.110 Importing sheep—Inspection—Penalty.
- 16.44.120 Importing infected sheep—Disinfecting places, boats and cars—Authority to enforce—Penalties.
- 16.44.130 Sale of infected sheep—Penalty.
- 16.44.140 Duty to report infection—Penalty.
- 16.44.150 Duty of officials to exercise care—Penalty.
- 16.44.160 Negligence of owner of infected stock—Liability.
- 16.44.170 Annual report to governor.
- 16.44.180 Penalty.

*Diseased animals, sale, etc.: RCW 9.08.020.*

**16.44.020 Duty to inspect sheep—Quarantine—Certificate to transfer—Expenses under quarantine—Oaths.** It shall be the duty of the director of agriculture to cause to be investigated by qualified representatives of the division of dairy and livestock all cases of contagious, infectious and communicable diseases among sheep within this state which may come to his or their knowledge, and to make official visits of inspection of any locality where such diseases exist or where they have reason to believe that such diseases may exist, and to inspect or cause to be inspected by a duly qualified veterinarian any sheep within the state, and all sheep brought into the state, from any other state, territory or foreign country, and he or they shall have authority to order a quarantine of any infected premises, and in case any such disease shall become prevalent in any locality within the state, the director of agriculture may issue a proclamation forbidding any sheep from being transferred from said locality without a certificate issued by him or under his direction by a representative of the division of dairy and livestock

showing such animals to be in good health. The expenses of herding, feeding and caring for sheep quarantined under the provisions of this section shall be paid by the owner thereof. The director of agriculture, the supervisor and all inspectors and veterinarians of the division of dairy and livestock shall have the power to administer oaths and examine witnesses in so far as the same may be necessary in the performance of their duties. [1927 c 165 § 16; RRS § 3125. Prior: See Reviser's note below. Formerly 16.44.020 and 16.44.090, part.]

**Reviser's note:** For prior laws on this subject, see 1925 ex.s. c 56; 1909 c 189; 1907 c 112; 1901 c 76; 1897 c 26; 1895 c 143; 1888 c 116; Code 1881 §§ 2228–2237; 1873 pp 481, 482; 1869 pp 377, 378; 1867 pp 148, 149; 1866 pp 104–106.

*Expenses incurred under provisions of chapter 16.44 RCW paid by owner of sheep: RCW 16.44.090.*

**16.44.030 Out of state infection—Importation prohibited—Proclamation—Penalty.** Whenever the governor has reason to believe, or the director of agriculture shall certify to the governor, that scabies or other contagious, infectious or communicable diseases of sheep have become prevalent in any locality or localities of any other state or territory or foreign country, or that conditions exist that render sheep from such locality likely to convey disease, the governor shall by proclamation declare such locality as presumably infected, and prohibit importation therefrom of any sheep into this state, except as under such restrictions as the director of agriculture may deem proper. Any person, persons, firm or corporation, who, after publication of such proclamation, having in charge or receiving any sheep from any of the prohibited districts, transports, conveys or drives the same to or within the limits of this state shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred nor more than one thousand dollars, and shall be liable for all damages sustained by any person, persons, firm or corporation by reason of the importation into this state of such sheep from prohibited districts: *Provided, however,* That nothing contained in this section shall prohibit the transportation of animals from such prohibited districts through the state by railroad or steamboat under such restrictions and regulations as may be prescribed by the law of this state or by the government of the United States. [1927 c 165 § 17; RRS § 3126. Prior: See Reviser's note to RCW 16.44.020.]

**16.44.040 Cooperation with federal agency—Manner of treatment.** The governor shall, through the secretary of agriculture of the United States government, request the cooperation of the United States bureau of animal industry in controlling and eradicating contagious, infectious and communicable diseases in sheep, and when said bureau, through its duly authorized representatives, agents or employees, shall be thus engaged, they shall possess the same power and authority in this state as the director of agriculture and the supervisor and veterinary inspectors of the division of dairy and livestock by virtue of this act; and all dipping and other treatment required for the control and eradication of such diseases within this state shall be performed in the

manner prescribed by the United States bureau of animal industry, and the dips, remedies and appliances used shall be those approved by said bureau. [1927 c 165 § 18; RRS § 3127. Prior: See Reviser's note to RCW 16.44.020. FORMER PART OF SECTION: 1927 c 165 § 20; RRS § 3129, now codified in RCW 16.44.045.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.44.045 Authority to inspect, quarantine and treat sheep.** The director of agriculture and the supervisor and veterinary inspectors of the division of dairy and livestock and the officials of the United States bureau of animal industry shall have authority to inspect, quarantine and treat sheep affected with any contagious, infectious or communicable disease or diseases, or suspected of being so affected, or that have been exposed to any such disease. [1927 c 165 § 20; RRS § 3129. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.040, part.]

*Duty of officials to exercise care—Penalty: RCW 16.44.150.*

**16.44.050 Quarantine areas—Penalty for breaking.** In all cases where quarantine of sheep is authorized by the provisions of this act, the director of agriculture, the supervisor and the veterinarians and inspectors of the division of dairy and livestock and the officials of the United States bureau of animal industry are each and all empowered to designate and specify the place, limits and boundaries of any quarantine area or territory, and they are hereby given authority over the same until the purpose of such quarantine shall have been effected, and any person, persons, firm or corporation owning or having in his or their possession any sheep within such quarantined area, who shall permit or allow any of such sheep to go beyond the limits of such area, without permit from the official in charge, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and each of the officials above named are hereby clothed with full authority to control sheep and territory in quarantine, and to take and hold possession thereof as provided by the terms of this act, and for all purposes thereof. [1927 c 165 § 27; RRS § 3136. Prior: See Reviser's note to RCW 16.44.020.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.44.060 Scabies—Dipping—Certificate of health.** Whenever it becomes necessary by reason of the prevalence of scabies, or exposure to scabies, of the sheep of any county or counties in this state, the director of agriculture shall have full authority to issue an order compelling the dipping of all the sheep in such county, counties or localities, whether all the sheep at the time be affected with or exposed to scabies or not; and such dipping shall be done under the supervision of a duly appointed and qualified veterinary inspector of the division of livestock or a federal inspector, and shall be done in some dip or dips approved by the United States bureau of animal industry, and be performed in a

manner in accordance with the rules and regulations of said bureau. After dipping, when the official in charge shall be satisfied that the sheep are in a sound and healthy condition, the owner shall be entitled to receive a certificate to that effect signed by said official in such form as the director of agriculture may prescribe and such certificate shall permit the sheep to move in and through all counties in this state so long as they remain free from disease and exposure thereto. [1927 c 165 § 19; RRS § 3128. Prior: See Reviser's note to RCW 16.44.020.]

**16.44.070 Quarantine of entire flock—Dipping—Notice—Penalty.** Whenever upon inspection as provided in RCW 16.44.045, any sheep, or band or flock of sheep, or any portion of them kept or herded in any county of the state shall be found infected with scabies or any other contagious, infectious or communicable disease, the entire band or flock in which said infected sheep are running or ranging shall be considered as infected and treated as such and the officer making the inspection shall immediately quarantine the entire band or flock and forthwith notify the owner or person in charge of such sheep in writing, to dip said sheep twice for said disease within the period of thirty days from said notice; the first dipping not to exceed fifteen days from the receipt of said notice; and the second dipping to be within the period from ten to fourteen days thereafter; and also notify the owner or person in charge of such sheep in writing to keep such sheep free from contact with other sheep, during such period, by such means as the officer shall specify until after the second dipping: *Provided*, That in case the owner or person in charge shall regard it unsafe to dip such sheep on account of their condition, especially ewes heavy with lamb, or by reason of the inclemency of the weather, the official in charge may authorize such owner or person in charge to place such sheep in a corral, field, feedyard or appropriate range, where such sheep shall be kept under quarantine regulations and free from contact with other sheep until such time as they are in condition to and are dipped as hereinabove provided. Any person or persons so allowed to keep sheep in such corral, field, feedyard or range, who shall wilfully or knowingly take or permit to be taken any sheep therefrom, except as permitted or directed by the officer in charge, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 21; RRS § 3130. Prior: See Reviser's note to RCW 16.44.020.]

**16.44.080 Refusal to dip—Seizure—Cost.** If any owner or person in charge of any sheep shall neglect or refuse to dip the same as required by this act upon the request of the director of agriculture or his duly authorized representative or any federal official clothed with power under this act, or to permit the same to be dipped by them, it shall be the duty of such officer to seize such animals and dip the same, and he is hereby given authority so to do, and when in the opinion of the officer the sheep are restored to health and free from



possible infection he shall notify in writing the owner or person in charge of the sheep of the amount of the costs, charges and expenses incurred by him, and the same shall be paid within ten days of the receipt of such notice and shall be a lien on the sheep and may be collected in the manner provided by law for the foreclosure of personal property liens. [1927 c 165 § 24; RRS § 3133. Prior: See Reviser's note to RCW 16.44.020.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.44.090 Expense—Lien—Foreclosure.** The expenses of inspection, feeding, holding, dipping, treating and taking of all sheep inspected, quarantined, dipped or otherwise treated under the provisions of this act, must be paid by the owner of such sheep and such charge shall be a lien upon such sheep for such charges and expenses, which lien shall be prior and paramount to any and all other liens, demands or other claims against such sheep, and the director of agriculture, the supervisor and inspectors of the division of dairy and livestock and the officers of the United States bureau of animal industry may retain possession of such sheep until such charges and expenses have been paid. Such liens shall be enforced at any time after ten days from the date when such charge shall be incurred and shall not be dependent upon possession of said sheep and may be foreclosed in the name of the state upon the relation of the director of agriculture in the manner provided by law for the foreclosure of other liens upon personal property; or in lieu of foreclosing such lien the director of agriculture may bring an action in the name of the state upon his relation in any court of competent jurisdiction to recover the amount of such charges and expenses: *Provided, however,* That no charge shall be made for the personal services of any officer performed in the enforcement of the provisions of this act in relation to the prevention and eradication of diseases of sheep. [1927 c 165 § 29; RRS § 3138. Prior: See Reviser's note to RCW 16.44.020. FORMER PART OF SECTION: 1927 c 165 § 16, part; RRS § 3125, part, now codified in RCW 16.44.020.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

*Expenses of herding, feeding and caring for sheep quarantined paid by owner: RCW 16.44.020.*

**16.44.100 Moving infected sheep—Permit—Damages—Penalty.** It shall be unlawful for any person, persons, firm or corporation within this state, to move his or their sheep which are infected with scabies or other contagious, infectious or communicable disease from place to place within this state without first obtaining from the director of agriculture or his authorized representative a traveling permit. Upon the receipt of an application for such traveling permit the director of agriculture or one of his authorized representatives shall examine the sheep, and such permit shall only be granted for the purpose of removing said sheep to the nearest suitable point where there are available dipping works or where such works can be constructed, at which place said sheep shall be dipped under the direction of the official making the examination. In such removal only that route shall be used which such official

shall designate in the permit, and before moving said sheep the owner or person in charge shall first notify all parties herding sheep along or over said route that the infected sheep must travel, of the fact that they are to pass and the time at which they will pass over said route, and such route shall be considered as quarantined, and any person, persons, firm or corporation injured or damaged by reason of the moving of said sheep shall be entitled to recover of the owners thereof in a civil action the amount of such damages: *Provided, however,* That no party shall be entitled to recover damages who shall voluntarily herd or cause to be herded any sheep on such quarantined ground, and any sheep so voluntarily herded on such ground shall be considered as affected as in this act provided for infected sheep within this state. Any person, persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 22; RRS § 3131. Prior: See Reviser's note to RCW 16.44.020.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.44.110 Importing sheep—Inspection—Penalty.** It shall be the duty of every person, persons, firm or corporation, their agents or employees who shall drive or herd or cause to be driven or herded, or bring or cause to be brought, by railroad or trail into this state from any other state, territory or foreign country, any sheep, to immediately upon crossing the state line and before proceeding into the state a distance greater than two miles, to make written application to the director of agriculture, or his nearest qualified representative, for the inspection of said sheep which application shall be delivered in person or by telegraph or telephone or registered letter. The application must state the time and place when and where the said sheep crossed the line, the locality from which they came, the name and residence of the owner or owners thereof, and of the person in control of the same, and the number, brands and character of the animals. The director of agriculture or his duly authorized representative on receiving such application shall at once proceed, either by himself or his duly authorized representative to inspect said sheep, and if upon inspection the officer making the inspection shall deem it necessary to prevent or avoid infection, shall cause said sheep to be quarantined not more than three miles from where they entered the state for such period as may be necessary, not to exceed thirty days, and if the officer shall deem it necessary he shall cause said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine. It shall be the duty of any person, persons, firm or corporation, their agents or employees, who shall ship into this state by railroad or steamboat from any other state, territory or foreign country any sheep, immediately upon unloading the same at any point within this state, to notify personally or by telegraph, telephone or registered letter the director of agriculture, and thereupon the director shall cause said sheep to be inspected, and if upon inspection the officer



shall deem it necessary to prevent or avoid infection he shall cause said sheep to be quarantined not more than three miles from the point where they were unloaded for such period not exceeding thirty days as he may deem necessary and may cause said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine: *Provided*, That this section shall not apply to sheep en route through the state on railroad trains or boat lines to other states: *And provided further*, That any sheep held in quarantine under the provisions of this section may be released therefrom by the officer imposing the quarantine at any time for the purpose of immediate slaughter: *And provided further*, That if in the opinion of the director of agriculture it is unnecessary to inspect sheep coming into this state from certain districts or localities in other states, territories or foreign countries he may issue an order dispensing with such inspection and restriction. Any person, persons, firm or corporation violating or failing to comply with any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars and such fine shall be a lien upon the sheep and may be foreclosed in the manner provided by law for the foreclosure of personal property liens, or may be enforced by judgment against the offending party. [1927 c 165 § 23; RRS § 3132. Prior: See Reviser's note to RCW 16.44.020.]

**16.44.120 Importing infected sheep—Disinfecting places, boats and cars—Authority to enforce—Penalties.** Any person, persons, firm or corporation who shall drive or cause to be driven, bring or cause to be brought, ship or cause to be shipped into this state from any other state, territory or foreign country, any sheep infected with scabies or other contagious, infectious or communicable disease knowing the same to be so infected shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than one thousand dollars, and in case the offending party is a corporation its officers shall be liable in the same manner as individuals would be liable. Any transportation company which shall convey from point to point within this state any sheep infected with scabies or any other contagious, infectious or communicable disease, knowing the same to be so infected, shall be deemed guilty of a misdemeanor and shall be punished as in this section above provided. It shall be the duty of such transportation company whose corrals, guards, pens, sheds, chutes, cars or boats shall have been occupied by infected sheep to within forty-eight hours after the same have been so occupied cause the same to be disinfected in accordance with the rules of the United States bureau of animal industry relating to the disinfection of places, boats and cars and any transportation company who shall fail or neglect to cause such disinfection shall be deemed guilty of a misdemeanor and punished as in this section above provided and the director of agriculture, his duly authorized representative, and the officers of the United

States bureau of animal industry shall each have authority to enforce the provisions of this section relating to disinfection and in case such transportation company fails or neglects for a period of forty-eight hours to so disinfect such cars, guards, pens, sheds, chutes or boats the officials may take possession of the same, and proceed to disinfect them at the expense of such company, such expense to be recovered in an action in the name of the state upon relation of the director of agriculture in any court of competent jurisdiction. [1927 c 165 § 25; RRS § 3134. Prior: See Reviser's note to RCW 16.44.020.]

**16.44.130 Sale of infected sheep—Penalty.** It shall be unlawful for any person, firm or corporation to sell, exchange, give away or in any manner part with to another, any sheep infected with any contagious or infectious or communicable disease, or any sheep which has, or which the owner or his agent or employee or the person in charge thereof, has reason to believe has, within thirty days next preceding such transfer been exposed to any contagious, infectious or communicable disease, without first notifying the person, firm or corporation to whom such sheep is transferred that it is so infected, or that it has been so exposed, and every person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 26; RRS § 3135. Prior: See Reviser's note to RCW 16.44.020.]

**16.44.140 Duty to report infection—Penalty.** It shall be the duty of any person, persons, firm or corporation owning or having in his or their control any sheep which have become infected with scabies or any other contagious, infectious or communicable disease or which have been exposed in any manner to such disease, to immediately report the same to the director of agriculture by registered letter, telegraph, telephone or in person within ten days after said condition has come to his or their knowledge and any person, persons, firm or corporation failing so to do or attempting to conceal the existence of any such disease, or wilfully obstructing or hindering the director of agriculture or the supervisor or any inspector of the division of dairy and livestock or any officer of the United States bureau of animal industry in the discharge of his or their duties under the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 28; RRS § 3137. Prior: See Reviser's note to RCW 16.44.020.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.44.150 Duty of officials to exercise care—Penalty.** It shall be the duty of the director of agriculture and the supervisor and veterinarians and inspectors of the division of dairy and livestock acting under the provisions of this act, to use every precaution to protect the sheep under their care from injury, and to select

proper places for quarantining and dipping, and to enforce quarantine regulations in such manner as to make the expenses as light as possible upon the owner, consistent with public interest; and any such officer who by virtue of any power conferred upon him under this act, wilfully oppresses, wrongs or injures any person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 31; RRS § 3140. Prior: See Reviser's note to RCW 16.44.020.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.44.160 Negligence of owner of infected stock—Liability.** Whenever any sheep affected with scabies or any other contagious, infectious or communicable disease shall mingle with any healthy animals belonging to another, through the fault or negligence of the owner of said diseased sheep, his agent or employees, such owner shall be liable in any action at law for all damages sustained by the owner of such healthy sheep. [1927 c 165 § 32; RRS § 3141. Prior: See Reviser's note to RCW 16.44.020.]

**16.44.170 Annual report to governor.** The director of agriculture shall make a part of his annual report to the governor all matters connected with his work in the prevention and eradication of diseases of sheep under the provisions of this act. [1927 c 165 § 30; RRS § 3139. Prior: See Reviser's note to RCW 16.44.020.]

**Reviser's note:** "this act", see note following RCW 16.36.010.

**16.44.180 Penalty.** Every person who shall violate or fail to comply with any of the provisions of this chapter for which violation or failure to comply no specific penalty is provided in this chapter shall be deemed guilty of a misdemeanor. [1957 c 22 § 7. Prior: 1927 c 165 § 33; RRS § 3142; see Reviser's note to RCW 16.44.020 for prior laws.]

## Chapter 16.46 DISEASES OF POULTRY

### Sections

|           |   |
|-----------|---|
| 16.46.010 | Poultry disease diagnostic facilities—Purpose.  |
| 16.46.020 | Poultry disease diagnostic facilities—Appropriation for construction, repairs, and equipment.   |
| 16.46.030 | Poultry disease diagnostic facilities—Poultry industry to contribute funds before appropriation utilized—Joint depository—Use of funds. |

**16.46.010 Poultry disease diagnostic facilities—Purpose.** Whereas, poultry production comprises one of the largest state agricultural industries; whereas, epidemic poultry diseases constitute a serious menace to the welfare of the people; whereas, present facilities for diagnosis and control of poultry diseases are not adequate; and whereas, the poultry industry has offered a sum constituting approximately one-third of the cost needed for establishment of adequate poultry disease diagnostic facilities.

Therefore, construction and equipping of poultry disease diagnostic laboratories is a subject of general interest and concern, which requires appropriate action by the legislature.

Therefore, the state exercising herein its police and sovereign power, endeavors by RCW 16.46.010 through 16.46.030 to remedy the further spread of epidemic poultry diseases by providing for establishment of sufficient diagnostic facilities.

Therefore, the legislature declares that in its considered judgment, the public good and general welfare of the citizens of this state require the enactment of this measure. [1955 c 349 § 1.]

**16.46.020 Poultry disease diagnostic facilities—Appropriation for construction, repairs, and equipment.** For the biennium ending June 30, 1957, there is appropriated to the Washington State University from the general fund the sum of sixty thousand dollars, or as much thereof as may be necessary, to carry out the purposes of RCW 16.46.010 through 16.46.030.

(1) Forty-five thousand dollars of the amount appropriated shall be allocated for the construction of a poultry disease diagnostic laboratory at the Western Washington experiment station at Puyallup.

(2) Fifteen thousand dollars of the amount appropriated shall be allocated for major repairs and betterments and the equipping of poultry disease diagnostic laboratories at the Northwestern Washington experiment station at Mount Vernon and at the Southwestern Washington experiment station at Vancouver. [1957 c 55 § 1; 1955 c 349 § 2.]

**16.46.030 Poultry disease diagnostic facilities—Poultry industry to contribute funds before appropriation utilized—Joint depository—Use of funds.** No portion of the sums allocated in subdivisions (1) and (2) of RCW 16.46.020 shall be expended, until the Washington state poultry industry pledged contribution of thirty-five thousand dollars has been deposited, in a joint depository selected by the Washington State University and the Washington state poultry industry.

All payments from the joint depository shall be made only:

(1) On vouchers signed by duly authorized representatives of the Washington State University and the Washington state poultry industry; and

(2) For construction and betterments and for the equipping of the poultry disease diagnostic laboratory at Western Washington experiment station at Puyallup. [1957 c 55 § 2; 1955 c 349 § 3.]

## Chapter 16.48 SLAUGHTERING AND TRANSPORTING LIVESTOCK

### Sections

|           |   |
|-----------|---|
| 16.48.120 | Disposition of fees.                      |
| 16.48.280 | Right of entry by inspectors.             |
| 16.48.310 | Rules and regulations—1937 act.           |
| 16.48.311 | Rules and regulations—1939 and 1945 acts. |
| 16.48.312 | Rules and regulations—1949 act.           |
| 16.48.320 | Penalties—1939 and 1937 acts.             |

16.48.325 Penalties—1949 act.

**16.48.120 Disposition of fees.** Funds collected for license fees and inspection fees shall be retained by the director of agriculture to be used for the enforcement of \*this act, chapter 75, Laws of 1937 and chapter 198, Laws of 1939. [1945 c 161 § 6; Rem. Supp. 1945 § 3169–25.]

**\*Reviser's note:** (1) "this act" (1945 c 161) was codified as RCW 16.48.050, 16.48.080, 16.48.090, 16.48.100 through 16.48.120, 16.48.140, 16.48.210 through 16.48.250 and 16.48.312.

(2) Chapter 75, Laws of 1937 was codified as RCW 16.48.011 through 16.48.040, 16.48.130, 16.48.160 through 16.48.170, 16.48.190, 16.48.260, 16.48.310 and 16.48.320.

(3) Chapter 198, Laws of 1939 was codified as RCW 16.48.130, 16.48.170, 16.48.180, 16.48.200 and 16.48.320.

**16.48.280 Right of entry by inspectors.** Inspectors or agents employed by the director shall have the right to enter, during business hours, any meat shop, restaurant or refrigerated locker plant, or any other place where meat is commercially stored or sold to make inspections of carcasses and to examine the books and records required by law to be kept therein and to compare the carcasses with such records. [1949 c 98 § 13; Rem. Supp. 1949 § 3055–18.]

**16.48.310 Rules and regulations—1937 act.** The director of agriculture is hereby authorized to make and promulgate rules and regulations for the enforcement of \*this act but no such rules and regulations shall be inconsistent with the provisions herein prescribed. [1937 c 75 § 16; RRS § 3169–16. FORMER PARTS OF ACT: (i) 1949 c 98 § 17; Rem. Supp. § 3055–21, now codified in RCW 16.48.311. (ii) 1945 c 161 § 14; Rem. Supp. 1945 § 3169–33, now codified in RCW 16.48.312.]

**\*Reviser's note:** "this act", see note following RCW 16.48.120.

**16.48.311 Rules and regulations—1939 and 1945 acts.** The director of agriculture is authorized and shall make such regulations as may be necessary to effectuate the provisions of \*this act and the provisions of chapter 198, Laws of 1939: *Provided*, That such regulations shall be consistent with the provisions of this act and of chapter 198, Laws of 1939. [1945 c 161 § 14; Rem. Supp. 1945 § 3169–33. Formerly RCW 16.48.300, part.]

**\*Reviser's note:** "this act and ... chapter 198, Laws of 1939", see note following RCW 16.48.120.

**16.48.312 Rules and regulations—1949 act.** The director of agriculture is authorized to make and promulgate rules and regulations for the enforcement of \*this act but no such rules and regulations shall be inconsistent with the provisions herein prescribed. [1949 c 98 § 17; Rem. Supp. 1949 § 3055–21. Formerly RCW 16.48.310, part.]

**\*Reviser's note:** "this act" (1949 c 98) was codified as RCW 16.48.010, 16.48.040, 16.48.130, 16.48.150 through 16.48.160, 16.48.180, 16.48.270 through 16.48.300, 16.48.311, 16.48.325, 16.56.040, 16.56.120, 16.56.125, 16.64.020 and 16.64.040.

**16.48.320 Penalties—1939 and 1937 acts.** Any person or persons found guilty of violating any of the provisions of \*this act and of chapter 156 of the Session Laws of 1935 shall be punished as prescribed by law for such offense and any person or persons who shall fail to perform any of the mandatory duties required by these acts shall be guilty of a misdemeanor. [1939 c 198 § 6; 1937 c 75 § 15; RRS § 3169–15. FORMER PART OF SECTION: 1949 c 98 § 18; Rem. Supp. 1949 § 3055–22, now codified in RCW 16.48.325.]

**\*Reviser's note:** "this act", see note following RCW 16.48.120; "chapter 156 of the Session Laws of 1935" was codified in chapter 16.59 RCW, later repealed by 1959 c 54 § 39.

**16.48.325 Penalties—1949 act.** Violations of \*this act, not otherwise provided for, shall be a misdemeanor. [1949 c 98 § 18; Rem. Supp. 1949 § 3055–22. Formerly RCW 16.48.300, part.]

**\*Reviser's note:** "this act", see note following RCW 16.48.312.

## Chapter 16.49 CUSTOM SLAUGHTERING

| Sections  |  |
|-----------|--|
| 16.49.430 | Custom farm slaughterer—Defined.   |
| 16.49.440 | Custom farm slaughterer—License—Issuance—Annual fee.   |
| 16.49.451 | Custom farm slaughterer—Transport of offal.  |
| 16.49.452 | Limited custom slaughtering license for slaughtering livestock owned by consumer for own use—Requirements.               |
| 16.49.454 | Limited custom slaughtering license for slaughtering livestock owned by consumer for own use—Annual license—Hearing.     |
| 16.49.500 | Washington State University laboratories exemption—Inspection, stamping.   |
| 16.49.510 | Penalty.   |
| 16.49.600 | Custom meat facilities—Definitions.  |
| 16.49.610 | Custom meat facilities—Conditions for preparation of inspected and uninspected meat and sale of inspected meat.          |
| 16.49.620 | Custom meat facilities—Enforcement—Inspection—Retail meat shop as custom meat facility—Rules and regulations for.        |
| 16.49.630 | Custom meat facilities—License—Required—Application, contents—Fee—Expiration.  |
| 16.49.640 | Custom meat facilities—Additional fee for late license renewal.  |
| 16.49.650 | Custom meat facilities—Rules and regulations—Initial promulgation—Application of administrative procedure act.           |
| 16.49.660 | Custom meat facilities—Conditional custom meat facility license—Fee—Expiration—As basis for issuance of regular license. |
| 16.49.670 | Custom meat facilities—Ordinances may be more restrictive.   |

**16.49.430 Custom farm slaughterer—Defined.** "Custom farm slaughterer" means any person licensed pursuant to the provisions of this chapter and who may under such license engage in the business of slaughtering meat food animals for the owner or owners thereof. [1967 ex.s. c 120 § 3; 1959 c 204 § 43.]

**16.49.440 Custom farm slaughterer—License—Issuance—Annual fee.** Any person slaughtering meat food animals as a custom farm slaughterer in this state shall apply to the director in writing for a custom

slaughterer's license and such application shall be accompanied by a twenty-five dollar annual license fee and such license shall expire on December 31st of any year. Such license shall be issued by the director upon his satisfaction that such applicant's equipment is properly constructed, has the proper sanitary and mechanical equipment and is maintained in a sanitary manner as required under this chapter and/or rules and regulations adopted hereunder. [1959 c 204 § 44.]

**16.49.451 Custom farm slaughterer—Transport of offal.** Notwithstanding any other provisions of the law, any custom farm slaughterer may, without the need for any other license, transport the offal of a meat food animal he has slaughtered for the owner thereof, when such offal is transported as a part of such slaughtering transaction and such offal is handled in a sanitary, suitable container and manner as provided by the director. [1967 ex.s. c 120 § 4.]

**16.49.452 Limited custom slaughtering license for slaughtering livestock owned by consumer for own use—Requirements.** When an official establishment as provided for in this chapter is not readily available in remote areas for the custom slaughtering of livestock, for the owner of such livestock for his own use, and it is not feasible to establish or maintain such an establishment because of economic factors, including the cost of maintaining veterinary inspection in such an establishment, the director may issue a limited license for the operation of a custom slaughtering establishment, having a fixed location, for the sole purpose of slaughtering livestock owned by the consumer, and which will be for the consumer's own use. Such custom slaughtering establishment shall be exempt from the provisions of this chapter relating to official establishments. [1961 c 91 § 1.]

**16.49.454 Limited custom slaughtering license for slaughtering livestock owned by consumer for own use—Annual license—Hearing.** No person shall operate a custom slaughtering establishment without first establishing the need for such an establishment and obtaining an annual license, expiring on June 30th, from the director and the payment of a twenty-five dollar license fee. If an application for renewal of the license provided for in this section is not filed prior to July 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not operated such custom slaughtering establishment subsequent to the expiration of his prior license.

The application shall be on a form prescribed by the director and shall contain the following:

- (1) The location of the facility to be used.
- (2) The day or days of intended operation.
- (3) The distance to the closest official establishment as provided for in this chapter.
- (4) Whether the facility already exists or is to be constructed.

(5) Any other matters that the director may require.

Upon receipt of such application the director shall consult with the meat inspection advisory board as provided for in \*RCW 16.49.070 and provide for a hearing to be held in the area where the applicant intends to operate a custom slaughtering establishment. Such hearing shall be subject to the provisions of chapter 34.04 as enacted or hereafter amended concerning contested cases. Upon the director's determination that such a custom slaughtering establishment is necessary in the area applied for and that the applicant has satisfied all other requirements of this chapter relating to custom slaughtering establishments including minimum facility requirements as prescribed by the director, the director shall issue a limited license to such applicant to operate such an establishment. When and if an official establishment is located and operated in the area, the director may deny renewal of the limited license subject to a hearing. [1961 c 91 § 2.]

**\*Reviser's note:** RCW 16.49.070 was repealed by 1969 ex.s. c 145 § 64. Later enactment, see chapter 16.49A RCW, Washington Meat Inspection Act.

**16.49.500 Washington State University laboratories exemption—Inspection, stamping.** For the purpose of carrying out its teaching, research, and extension programs, the Washington State University meats laboratory(s) shall be exempt from the licensing provisions of this chapter and shall be issued an official establishment number and stamp. Such slaughter operations shall be conducted under inspection, as provided in this chapter, by a qualified inspector under veterinary supervision by the college of veterinary medicine of the Washington State University. Meat animals slaughtered in the laboratory(s) shall bear the stamp "Inspected and Passed". [1959 c 204 § 50.]

**16.49.510 Penalty.** The violation of any provision of this chapter and/or rules and regulations adopted hereunder shall constitute a misdemeanor. [1959 c 204 § 51.]

**16.49.600 Custom meat facilities—Definitions.** "Inspected meat" means the carcasses or parts thereof of meat food animals which have been slaughtered and inspected at establishments subject to inspection under the Washington Meat Inspection Act, chapter 16.49A RCW, or a federal meat inspection act.

"Uninspected meat" means the carcasses or parts thereof of meat food animals which have been slaughtered by the owner thereof, or which have been slaughtered by a custom farm slaughterer.

"Custom meat facility" means any establishment regularly licensed under RCW 16.49.600 through 16.49.670 and 16.49A.370 which prepares inspected meat and uninspected meat for the household consumer in quantities of not less than one quarter or more side of a meat food animal.

"Household user" means the ultimate consumer, the members of his household, his nonpaying guests and employees. [1971 ex.s. c 98 § 2.]

**16.49.610 Custom meat facilities—Conditions for preparation of inspected and uninspected meat and sale of inspected meat.** Inspected and uninspected meat may be prepared by any regularly licensed custom meat facility under the following conditions:

(1) Inspected meat and the meat and meat food products prepared therefrom shall be separated at all times from uninspected meat and the meat food products prepared therefrom, by a sufficient distance to prevent inspected meat from coming into contact with uninspected meat.

(2) Preparation of inspected meat and uninspected meat shall be done at different times.

(3) No sales of inspected meat, nor the meat food products derived therefrom shall be made to any person other than a household user.

(4) Uninspected meat shall be prepared for the sole use of the owner of said uninspected meat, who shall be a household user.

(5) Inspected meat may be purchased by a custom meat facility for preparation and sale to a household user only.

(6) Inspected meat which has been prepared by a custom meat facility shall not be sold in less than one full quarter or one side of a meat food animal.

(7) Uninspected meat, as well as the packages and containers containing any meat or meat food products prepared therefrom shall be plainly marked and labeled "not for sale" or equivalent language.

(8) Any custom meat facility shall comply with sanitation rules and regulations promulgated by the director of agriculture. [1971 ex.s. c 98 § 3.]

**16.49.620 Custom meat facilities—Enforcement—Inspection—Retail meat shop as custom meat facility—Rules and regulations for.** The director of agriculture shall promulgate such rules and regulations as he may deem necessary to enforce the conditions set forth in RCW 16.49.610. The director shall also cause inspection of each custom meat facility licensed under RCW 16.49.600 through 16.49.670 and 16.49A.370 to be made at such times as he may deem necessary to adequately insure compliance with RCW 16.49.600 through 16.49.670 and 16.49A.370 and all regulations promulgated hereunder: *Provided*, That the department of agriculture and the department of social and health services may allow any retail meat shop to act as a meat handling facility and exempt from the provisions of subsections (3) and (6) of RCW 16.49.610 and may exempt any meat handling facility from the said provisions of subsections (3) and (6) of RCW 16.49.610 if the director of the department of agriculture and the secretary of the department of social and health services shall determine that any such retail meat shop or custom meat handling facility is located in an area so remote from centers of population that few establishments exist that can practicably handle, prepare, and sell meat to the residents of such remote area: *Provided further*, That the director of the department of agriculture and the secretary of the department of social and health services shall make such regulations as they deem necessary to insure that the operations of such

custom meat facilities and retail meat shops in remote areas shall be conducted in a manner adequately to protect the health of the residents in the areas served by such facilities. [1971 ex.s. c 98 § 4.]

**16.49.630 Custom meat facilities—License—Required—Application, contents—Fee—Expiration.** It shall be unlawful for any person to operate a custom meat facility without first obtaining an annual license from the department of agriculture. Application for such license shall be on a form prescribed by the department and accompanied by a twenty-five dollar license fee. Such application shall include the full name of the applicant, if such applicant is an individual, receiver, or trustee; and the full name of each member of the firm or the names of the officers of the corporation if such applicant is a firm or corporation. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of the person domiciled in this state authorized to receive and accept service of legal process of all kinds for the applicant, and the applicant shall supply any other information required by the department. All custom meat facility licenses shall expire on June 30th of each year. [1971 ex.s. c 98 § 5.]

**16.49.640 Custom meat facilities—Additional fee for late license renewal.** If the application for the renewal of a custom meat facility license is not filed prior to July 1st in any year, an additional fee of twenty-five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. [1971 ex.s. c 98 § 6.]

**16.49.650 Custom meat facilities—Rules and regulations—Initial promulgation—Application of administrative procedure act.** The department of agriculture shall, within ninety days after August 9, 1971, promulgate the rules and regulations provided for herein, and give notice that a hearing will be held to determine that such rules, regulations, or orders will be applicable to the provisions of RCW 16.49.600 through 16.49.670 and 16.49A.370. Such rules shall be in accordance with the requirements of chapter 34.04 RCW as now or hereafter amended. All rules and regulations promulgated subsequent to the adoption of the initial rules and regulations provided for in RCW 16.49.600 through 16.49.670 and 16.49A.370, shall be adopted in accordance with chapter 34.04 RCW, as now or hereafter amended. [1971 ex.s. c 98 § 7.]

**16.49.660 Custom meat facilities—Conditional custom meat facility license—Fee—Expiration—As basis for issuance of regular license.** (1) Any person who on August 9, 1971 is engaged in the business of processing inspected and uninspected meat, except those persons who are on that date operating establishments inspected under the Washington state meat inspection act or a federal meat inspection act, shall within ninety days after August 9, 1971 file an application for a conditional custom meat facility license on a form prescribed by the department and accompanied

by a license fee of twenty-five dollars. The department shall forthwith issue to each such applicant a conditional custom meat facility license.

(2) The department shall, as soon as practicable after the adoption of the regulations required to be promulgated under RCW 16.49.600 through 16.49.670 and 16.49A.370, cause an inspection to be made of each facility operated by a person who has been granted a conditional custom meat facility license. The department shall thereafter promptly notify said conditional licensee in writing, transmitted to said conditional licensee by certified mail, of what act or actions if any such conditional licensee must take, do, and perform to bring the facility operated by him into compliance with RCW 16.49.600 through 16.49.670 and 16.49A.370, and the regulations promulgated thereunder as outlined in the written notification mailed by certified mail to such conditional licensee. Within a maximum of one hundred and twenty days after receipt of such written notification from the department, the conditional licensee shall comply with all requirements set forth in the department's written notification. If such conditional licensee fails to comply with the requirements set forth in the department's written notification within a maximum of one hundred and twenty days, said conditional license shall expire and become void. If such conditional licensee has brought the facility operated by him into compliance with requirements set forth in the department's written notification, he shall forthwith be issued a custom meat facility license without further application or fee, which license shall remain valid until June 30, 1972. After June 30, 1972, the issuance of custom meat facility licenses shall be governed by the provisions contained in RCW 16.49.600 through 16.49.640. [1971 ex.s. c 98 § 8.]

**16.49.670 Custom meat facilities—Ordinances may be more restrictive.** RCW 16.49.600 through 16.49.670 and 16.49A.370 shall in no way supersede or restrict the authority of any county or any city to adopt ordinances which are more restrictive for the handling of meat than those provided for herein. [1971 ex.s. c 98 § 9.]

### Chapter 16.49A

#### WASHINGTON MEAT INSPECTION ACT

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16.49A.920 Chapter cumulative and nonexclusive.

*Custom meat facilities: RCW 16.49.600 through 16.49.670 and 16.49A.370.*

**16.49A.010 Short title.** This chapter may be known and cited as the "Washington meat inspection act". [1969 ex.s. c 145 § 1.]

**16.49A.020 Declaration of purpose.** The purposes of this chapter are to adopt new legislation governing meat and meat food products and to promote uniformity of state legislation with the federal meat inspection act. Meat and meat food products are an important source of the state's total supply of food. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Meat and meat food products not reaching these standards are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that all articles and animals which are regulated under this chapter substantially affect the public and that regulation by the director as contemplated by this chapter is appropriate to protect the health and welfare of consumers. [1969 ex.s. c 145 § 2.]

**16.49A.030 Definitions govern construction.** Unless the context otherwise requires, the definitions in RCW 16.49A.040 through 16.49A.250 govern the construction of this chapter. [1969 ex.s. c 145 § 3.]

**16.49A.040 "Department".** "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 145 § 4.]

**16.49A.050 "Director".** "Director" means the director of the department of agriculture or his duly authorized representative. [1969 ex.s. c 145 § 5.]

**16.49A.060 "Person".** "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors. [1969 ex.s. c 145 § 6.]

**16.49A.070 "Consumer".** "Consumer" means an ultimate consumer or any facility such as a restaurant, boarding house, institution or catering service which prepares food for immediate consumption by the consumer on the premises where it is prepared or elsewhere. [1969 ex.s. c 145 § 7.]

**16.49A.080 "Retail meat dealer".** "Retail meat dealer" means any person who handles or prepares meat for the purpose of sale to consumers. [1969 ex.s. c 145 § 8.]

**16.49A.090 "Wholesale meat dealer".** "Wholesale meat dealer" means any person who prepares or handles meat for distribution or sale to any retail meat dealer or consumer, including any distribution facility owned or controlled by one or more retail meat dealers used for preparing meat or distributing meat to any such retail meat dealer or consumer. [1969 ex.s. c 145 § 9.]

**16.49A.100 "Prepared".** "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed. [1969 ex.s. c 145 § 10.]

**16.49A.110 "Governmental unit".** "Governmental unit" means any governmental unit, agency, or political subdivision including cities, towns and counties which may be formed under the laws of the state of Washington. [1969 ex.s. c 145 § 11.]

**16.49A.120 "Animal food manufacturer".** "Animal food manufacturer" means any person processing animal food derived wholly or in part from carcasses or parts or products of the carcasses of meat food animals. [1969 ex.s. c 145 § 12.]

**16.49A.130 "Meat food product".** "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or any other portion of the carcass of any meat food animal, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the director under such conditions as he may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as it applies to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to meat food animals. [1969 ex.s. c 145 § 13.]

**16.49A.140 "Meat food animal".** "Meat food animal" means cattle, sheep, swine, goats, horses or any other animal capable of use as a human food. [1969 ex.s. c 145 § 14.]

**16.49A.150 "Capable of use as human food".** "Capable of use as human food" means any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the director to deter its use as human food, or unless it is naturally inedible by humans. [1969 ex.s. c 145 § 15.]



**16.49A.160 "Adulterated".** "Adulterated" means any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2) If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity, (b) a food additive, or (c) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(3) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392;

(4) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394;

(5) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396: *Provided*, That an article which is not adulterated under subsection (2), (3) or (4) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the director in establishments at which inspection is maintained under this chapter;

(6) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(7) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(8) If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(10) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394;

(11) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or, if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

(12) If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance. [1969 ex.s. c 145 § 16.]

*Color additives: RCW 69.04.396.*

*Food additives: RCW 69.04.394.*

*Pesticide chemicals in or on raw agricultural commodities: RCW 69.04.392.*

**16.49A.170 "Misbranded".** "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) If in a package or other container unless it bears a label showing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (b) of this subsection (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the director;

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the director under RCW 16.49A.300(3) unless (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the director under RCW 16.49A.300(3), unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) If it is not subject to the provisions of subsection (7), unless its label bears (a) the common or usual name of the food, if any there be, and (b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the director, be designated as spices, flavorings, and colorings without naming each: *Provided*, That, to the extent that compliance with the requirements of clause (b) of this subsection (9) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director;

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as prescribed by the director;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided*, That, to the extent that compliance with the requirements of this subsection (11) is impracticable, exemptions shall be established by regulations promulgated by the director; or

(12) If it fails to bear directly thereon, or on its container as the director may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the director may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. [1969 ex.s. c 145 § 17.]

**16.49A.180 "Label"**. "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article. [1969 ex.s. c 145 § 18.]

**16.49A.190 "Labeling"**. "Labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1969 ex.s. c 145 § 19.]

**16.49A.200 "Uniform Washington food, drug, and cosmetic act"**. "Uniform Washington food, drug, and cosmetic act" means chapter 69.04 RCW as enacted or hereafter amended. [1969 ex.s. c 145 § 20.]

**16.49A.210 "Pesticide chemical", "food additive", "color additive", "raw agricultural commodity"**. "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the uniform Washington food, drug, and cosmetic act. [1969 ex.s. c 145 § 21.]

**16.49A.220 "Official mark"**. "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article or animal under this chapter. [1969 ex.s. c 145 § 22.]

**16.49A.230 "Official inspection legend"**. "Official inspection legend" means any symbol prescribed by regulations of the director showing that an article was inspected and passed in accordance with this chapter. [1969 ex.s. c 145 § 23.]

**16.49A.240 "Official certificate"**. "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter. [1969 ex.s. c 145 § 24.]

**16.49A.250 "Official device"**. "Official device" means any device prescribed or authorized by the director for use in applying any official mark. [1969 ex.s. c 145 § 25.]

**16.49A.255 "Intrastate commerce"**. "Intrastate commerce" means any article in intrastate commerce whether such article is alive or processed and is intended for sale, held for sale, offered for sale, sold, stored, transported or handled in this state in any manner and prepared for eventual distribution to consumers in this state whether at wholesale or retail. [1969 ex.s. c 145 § 67.]

**16.49A.260 Examination of animals before entry into slaughtering establishment—Disposition of diseased animals**. For purposes set forth in RCW 16.49A.020, the director shall cause inspections and examinations of all meat animals for disease before they shall be allowed to enter into any slaughtering, packing, meat-canning, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in intrastate commerce; and all meat food animals found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other meat food animals, and when so slaughtered the carcasses of meat food animals shall be subject to careful examination and inspection, as provided by the rules and regulations adopted by the director under the provisions of this chapter. [1969 ex.s. c 145 § 26.]

**16.49A.270 Examination and inspection of carcasses—Marking—Destruction of adulterated carcasses—Reinspection—Removal of inspectors, when**. For purposes set forth in RCW 16.49A.020, the director shall cause a post mortem examination and inspection of the carcasses and parts thereof of all meat food animals to be prepared at any slaughtering, meat-canning, salting, packing, or similar establishments in this state as articles of intrastate commerce, which are capable of use as human food. The carcasses and parts thereof of such meat food animals found to be not adulterated shall, by the inspectors be marked, stamped, tagged or labeled as "Inspected and passed." The said inspectors shall label, mark, stamp or tag as "Inspected and condemned" all carcasses and parts thereof of meat food animals found to be adulterated. All carcasses and parts thereof of meat food animals found to be adulterated, and all carcasses and parts thereof thus inspected shall be destroyed for food purposes by the said establishment in the presence of an inspector. The director may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof. The inspectors shall reinspect the carcasses or part thereof when they deem it necessary to determine whether the carcasses or part thereof have become adulterated since the first inspection. If any carcass or parts thereof shall upon examination and inspection subsequent to the first examination, be found to be adulterated, it shall be destroyed for food purposes by said establishment in the presence of an inspector, and

the director may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof. [1969 ex.s. c 145 § 27.]

**16.49A.280 Application of foregoing provisions—Director may limit entry of articles into establishments.** The foregoing provisions shall apply to all carcasses or parts of carcasses of meat food animals, or the meat or meat products thereof which may be brought into any slaughtering, meat-canning, salting, packing, or similar establishment, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products, which, after having been issued from any slaughtering, meat-canning, salting, packing, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The director may limit the entry of carcasses, parts of carcasses, meat food products and other materials into any establishment at which inspection under this chapter is maintained, under conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishment will be consistent with the purposes of this chapter. [1969 ex.s. c 145 § 28.]

**16.49A.290 Inspection of meat food products—Marking—Destruction of adulterated products.** For the purposes hereinbefore set forth the director shall cause to be made, by inspectors employed for that purpose, an examination and inspection of all meat food products prepared for sale or use in any slaughtering, meat-canning, salting, packing, or similar establishment, and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "Inspected and passed" all such products found not adulterated; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the director may remove inspectors from any establishment which fails to destroy such condemned meat food products. [1969 ex.s. c 145 § 29.]

**16.49A.300 Containers, closing or sealing—Labeling requirements—False or misleading labels—Hearing—Appeal from director's determination.** (1) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "Inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under the supervision of an inspector, which label shall

state that the contents thereof have been "Inspected and passed" under the provisions of this chapter and no inspection and examination of meat or meat food products deposited or enclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained shall be deemed to be complete until such meat or meat food products have been sealed or enclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(2) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this chapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the director may require, the information required under RCW 16.49A.170.

(3) The director, whenever he determines such action is necessary for the protection of the public, may prescribe: (a) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marketing and labeling any articles or meat food animals subject to this chapter; (b) definitions and standards of identity or composition for articles not inconsistent with any such standards established under the uniform Washington food, drug and cosmetic act.

(4) No article subject to this chapter shall be sold or offered for sale by any person, firm, or corporation, in this state, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the director are permitted.

(5) If the director has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this chapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the superior court in the county in which such person, firm, or corporation has its principal place of business, or to the superior court of Thurston county. [1969 ex.s. c 145 § 30.]

*Bacon, packaging at retail to reveal quality and leanness: RCW 69.04.205 through 69.04.207.*

**16.49A.310 Inspection of establishments for sanitary conditions—Rules and regulations to maintain.** The director shall cause to be made, by experts in sanitation

or by other competent inspectors, such inspection of slaughtering, meat-canning, salting, packing, or similar establishments in which meat food animals are slaughtered and the meat and meat food products thereof are prepared for sale or use in this state as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "Inspected and passed." [1969 ex.s. c 145 § 31.]

**16.49A.320 Inspections to be made during nighttime as well as daytime.** The director shall cause an examination and inspection of all meat food animals and the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of sale or use in this state to be made during the nighttime as well as during the daytime when the slaughtering of said meat food animals, or the preparation of said food products is conducted during the nighttime. [1969 ex.s. c 145 § 32.]

**16.49A.330 Prohibited practices.** No person, firm, or corporation shall, with respect to any meat food animals or any carcasses, parts of carcasses, meat or meat food products of any such animals—

(1) Slaughter any such meat food animals or prepare any such articles which are capable of use as human food at any establishment preparing any such articles for sale or use in this state, except in compliance with the requirements of this chapter or the federal meat inspection act (21 USC 71 et seq.);

(2) Sell, knowingly transport, offer for sale, or knowingly offer for transportation, or knowingly receive for transportation, in intrastate commerce, (a) any such articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (b) any articles required to be inspected under this chapter or the federal meat inspection act (21 USC 71 et seq.) unless they have been so inspected and passed; or

(3) Do, with respect to any such articles which are capable of use as human food any act, knowingly while they are being transported in intrastate commerce, or while held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded. [1969 ex.s. c 145 § 33.]

**16.49A.340 Unlawful acts as to official devices, labels, certificates, etc.** (1) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director.

(2) No person, firm, or corporation shall—

(a) forge any official device, mark, or certificate;

(b) without authorization from the director use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(c) contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(d) knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(e) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director; or

(f) knowingly represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has, respectively, not been so inspected and passed, or exempted. [1969 ex.s. c 145 § 34.]

**16.49A.350 Restrictions on sale, transportation, etc. of equine meat or meat products.** No person, firm, or corporation shall sell, knowingly transport, offer for sale or knowingly offer for transportation, or knowingly receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the director to show the kinds of animals from which they were derived. When required by the director, with respect to establishments at which inspection is maintained under this chapter, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which other meat food animals are slaughtered or their carcasses, parts thereof, meat or meat food products are prepared. [1969 ex.s. c 145 § 35.]

**16.49A.360 Bribing inspector or other official—Acceptance of bribe—Penalty.** Any person, firm or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of the state authorized to perform any of the duties prescribed by this chapter or by the rules and regulations of the director, any money or other thing of value, with intent to influence said inspector, or other officer or employee of the state in the discharge of any duty provided for in this chapter, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars and by imprisonment for not less than one year nor more than three years; and any inspector, or other officer or employee of the state authorized to perform any of the duties prescribed

by this chapter who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value, given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged and shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars and by imprisonment for not less than one year nor more than three years. [1969 ex.s. c 145 § 36.]

**16.49A.370 Exemptions from inspection requirements.** (1) The provisions of this chapter requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations for intrastate commerce shall not apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor to the custom slaughter by any person, firm, or corporation of meat food animals delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees, nor to regularly licensed custom meat facilities.

(2) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection or not required to be inspected under this section. [1971 ex.s. c 98 § 1; 1969 ex.s. c 145 § 37.]

*Custom meat facilities: RCW 16.49.600 through 16.49.670.*

**16.49A.380 Director may prescribe regulations for storage and handling of meats and meat food products.** The director may by regulations prescribe conditions under which carcasses, parts of carcasses, and meat food products of meat food animals capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, whenever the director deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is an infraction punishable under RCW 16.49A.630. [1969 ex.s. c 145 § 38.]

**16.49A.390 Meat food or products for nonhuman consumption—Restrictions.** Inspection shall not be provided under this chapter at any establishment for the slaughter of meat food animals or the preparation of any carcasses or parts or products of such animals,

which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the director to deter their use for human food. No person, firm, or corporation shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts thereof, meat or meat food products of any such animals, which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the director or are naturally inedible by humans. [1969 ex.s. c 145 § 39.]

**16.49A.400 Facilities, records, inventories to be open to inspection and sampling.** (1) The following classes of persons, firms, and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses; and all persons, firms, and corporations subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the director, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(a) Any persons, firms, or corporations that engage, for intrastate commerce, in the business of slaughtering any meat food animals, or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals, for use as human food or animal food;

(b) Any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers, wholesalers or otherwise), or transporting in intrastate commerce, or storing in or for intrastate commerce, any carcasses, or parts or products of carcasses, of any such animals;

(c) Any persons, firms, or corporations that engage in business, in or for intrastate commerce, as renderers, or engage in the business of buying, selling, or transporting, in intrastate commerce, or importing, any dead, dying, disabled, or diseased meat food animals or parts of the carcasses of any such animals that have died otherwise than by slaughter.

(2) Any record required to be maintained by this chapter shall be maintained for such period of time as the director may by regulations prescribe. [1969 ex.s. c 145 § 40.]

**16.49A.410 Designation of time for slaughter for inspection purposes.** Whenever the director shall deem it necessary in order to furnish proper, efficient and economical inspection of two or more establishments and the proper inspection of meat food animals or meat, the director, after a hearing on written notice to the licensee of each such establishment affected, may designate days and hours for the slaughter of meat food animals and the preparation or processing of meat at such establishments. The director in making such designation of days

and hours shall give consideration to the existing practices at the affected establishment fixing the time for slaughter of meat food animals and the preparation or processing of meat thereof. [1969 ex.s. c 145 § 41.]

**16.49A.420 Disposition of adulterated or misbranded carcass, meat or meat food product when away from preparing establishment—Declared public nuisance.** The director, whenever he finds any carcass, part thereof, meat or meat food product subject to the provisions of this chapter away from the establishment where such carcass, part thereof, meat or meat food product was prepared or anywhere in intrastate commerce, that is adulterated or misbranded, shall render such meat or meat food product unsalable or shall order the destruction of such carcass, part thereof, meat or meat food product which are hereby declared to be a public nuisance. [1969 ex.s. c 145 § 42.]

**16.49A.430 Adulterated or misbranded products—Embargo.** The director may, when he finds or has probable cause to believe that any carcass, part thereof, meat or meat food product subject to the provisions of this chapter which has been or may be introduced into intrastate commerce and such carcass, part thereof, meat or meat food product is so adulterated or misbranded that its embargo is necessary to protect the public from injury, affix on such carcass, part thereof, meat or meat food product a notice of its embargo prohibiting its sale or movement in intrastate commerce without a release from the director. The director shall subsequent to embargo, if he finds that such carcass, part thereof, meat or meat food product is not adulterated or misbranded so as to be in violation of this chapter, remove such embargo forthwith. [1969 ex.s. c 145 § 43.]

**16.49A.440 Embargoed products—Petition to superior court—Hearing—Order—Costs.** When the director has embargoed any carcass, part thereof, meat or meat food product, he shall petition the superior court of the county in which such carcass, part thereof, meat or meat food product is located without delay and within twenty days for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after a prompt hearing to any claimant of such carcass, part thereof, meat or meat food product, shall issue an order which directs the removal of such embargo or the destruction or the correction and release of such carcass, part thereof, meat or meat food product. An order for destruction or correction and release shall contain such provisions for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond, as the court finds indicated in the circumstance. [1969 ex.s. c 145 § 44.]

**16.49A.450 Embargoed products—Claimant may agree to disposition of products without petition to court.** The director need not petition the superior court as

provided for in RCW 16.49A.440, if the owner or the claimant of such carcass, part thereof, meat or meat food product agrees in writing to the disposition of such carcass, part thereof, meat or meat food product as the director may order. [1969 ex.s. c 145 § 45.]

**16.49A.460 Embargoed products—Consolidation of petitions.** Two or more petitions under RCW 16.49A.440, which pend at the same time and which present the same issue and claimant hereunder, may be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1969 ex.s. c 145 § 46.]

**16.49A.470 Embargoed products—Claimant entitled to sample of article.** The claimant in any proceeding by petition under RCW 16.49A.440 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1969 ex.s. c 145 § 47.]

**16.49A.480 Damages from administrative action.** No state court shall allow the recovery of damages from administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1969 ex.s. c 145 § 48.]

**16.49A.490 Annual license—Fee—Contents of application.** It shall be unlawful for any person, firm, or corporation to act as a custom slaughterer at any mobile or fixed location without first obtaining a license from the department. Such license shall be an annual license and shall expire on June 30th of each year. A separate license shall be required for each mobile unit or establishment. Application for a license shall be a form prescribed by the department and accompanied by a twenty-five dollar annual license fee. Such application shall include the full name of the applicant for the license and the location where one or more of the enumerated activities will be carried on by the applicant. If such applicant is an individual, receiver, trustee, firm or corporation, the full name of each member of the firm, or the names of the officers of the corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department. Upon approval of the application by the department and compliance with the provisions of this chapter, including applicable regulations adopted hereunder by the department the applicant shall be issued a license or renewal thereof. [1974 1st ex.s. c 18 § 1; 1969 ex.s. c 145 § 49.]

**16.49A.500 Penalty for late renewal.** If the application for the renewal of any license provided for under this chapter is not filed prior to July 1st in any year an additional fee of twenty-five dollars shall be assessed

and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he has not carried on the activity for which he was licensed under the provisions of this chapter subsequent to the expiration of his license. [1969 ex.s. c 145 § 50.]

**16.49A.510 Denial, suspension, revocation of license—Grounds.** The department may, subsequent to a hearing thereon subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act) deny, suspend, revoke any license required under the provisions of this chapter if it determines that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the department.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any facilities or parts of such facilities subject to the provisions of this chapter. [1969 ex.s. c 145 § 51.]

**16.49A.520 Inspectors—Duties.** The director shall employ inspectors to make examination and inspection of all meat food animals, the inspection of which is provided for under the provisions of this chapter, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this chapter and by the rules and regulations to be prescribed by the director, and said director shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this chapter, and all inspections and examinations made under this chapter shall be such and made in such manner as described in the rules and regulations prescribed by said director not inconsistent with provisions of this chapter. [1969 ex.s. c 145 § 55.]

**16.49A.530 Department's authority to withdraw inspectors from unsanitary establishments.** The provisions of RCW 16.49A.270 through 16.49A.290 shall in no way limit the department's authority to forthwith withdraw inspection at any facility or establishment subject to the provisions of this chapter when the department through its inspectors determines that such facility or establishment is unsanitary and that the carcasses or parts thereof, meat or meat food products prepared therein would be adulterated because of such unsanitary conditions. [1969 ex.s. c 145 § 52.]

**16.49A.540 Overtime inspection service—Payment for.** Costs for any overtime inspection service requested or required by a license shall be charged to said licensee at the actual cost to the department including supervisor cost. Charges for such overtime inspection shall be due and payable by the licensee to the department by the end of the next business day. The director may withhold inspection at any establishment or facility operated by such licensee until proper payment has been made by the licensee as herein required. The director may further require that payment for overtime costs be made in advance if such licensee does not make proper payment for overtime inspection services. [1969 ex.s. c 145 § 57.]

**16.49A.550 Intergovernmental cooperation.** The director may in order to carry out the purpose of this chapter enter into agreements with any federal, state or other governmental unit for joint inspection programs or for the receipt of moneys from such federal, state or other governmental units in carrying out the purpose of this chapter. [1969 ex.s. c 145 § 59.]

**16.49A.560 Adoption of regulations promulgated under federal meat inspection act.** The regulations promulgated under the provisions of the federal meat inspection act (21 USC 601 et seq.) and not in conflict with the provisions of this chapter are hereby adopted as regulations applicable under the provisions of this chapter. [1971 ex.s. c 108 § 1; 1969 ex.s. c 145 § 54.]

**16.49A.570 Uniformity of state and federal acts and regulations as purpose—Procedure.** The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal meat inspection act 21 USC 601 et seq., and regulations adopted thereunder.

In accord with such purpose any regulations adopted under the federal meat inspection act and published in the federal register shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.04 RCW as enacted or hereafter amended. The director shall, however, within thirty days of the publication of the adoption of any such regulation under the federal meat inspection act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.04 RCW, as enacted or hereafter amended, concerning the adoption of regulations. [1971 ex.s. c 108 § 2; 1969 ex.s. c 145 § 60.]

**16.49A.580 Continuation of prior licenses.** Any license issued under the provisions of chapter 16.49 RCW and expiring December 31, 1969, shall continue in effect until June 30, 1970, without the need of renewal. [1969 ex.s. c 145 § 58.]

**16.49A.590 Disposition of moneys.** All moneys received by the department under the provisions of this chapter shall be paid into the state treasury. [1969 ex.s. c 145 § 61.]



**16.49A.600 Exemptions.** The provisions of this chapter including licensing and those requiring inspection of the slaughter of meat food animals and the preparation of carcasses or parts thereof, meat or meat food products shall not apply to operations of the types traditionally and usually conducted by a retail meat dealer at retail stores and restaurants, when conducted at any retail store or restaurant or similar type establishment for sale in normal retail quantities or service of such articles to ultimate consumers at such establishment. Normal retail quantities or service of such articles to consumers shall be as defined in regulations adopted under the provisions of this chapter. [1971 ex.s. c 108 § 3; 1969 ex.s. c 145 § 68.]

**16.49A.610 Governmental units' authority to license, inspect and/or prohibit sale of meat or meat food products.** This chapter shall in no manner be construed to deny or limit the authority of any governmental unit to license and carry on the necessary inspection of meat food animal carcasses or parts thereof, meat or meat food products distribution facilities and equipment of retail meat distributors, selling, offering for sale, holding for sale or trading, delivering or bartering meat within such governmental unit's jurisdiction and/or to prohibit the sale of meat food animal carcasses or parts thereof, meat or meat food products within its jurisdiction when such meat food animal carcasses or parts thereof, meat or meat food products are adulterated or distributed under unsanitary conditions. [1969 ex.s. c 145 § 69.]

**16.49A.620 Prior liability preserved.** The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on August 11, 1969. [1969 ex.s. c 145 § 62.]

**16.49A.630 Penalty.** Any person violating any provisions of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and shall be guilty of a gross misdemeanor for any second or subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 ex.s. c 145 § 63.]

**16.49A.640 Rules and regulations subject to administrative procedure act.** The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.04 RCW, the Administrative Procedure Act, as enacted or hereafter amended. [1969 ex.s. c 145 § 53.]

**16.49A.650 Continuation of rules adopted pursuant to repealed chapter.** The repeal of chapter 16.49 RCW (Meat Inspection Act) and the enactment of this chapter shall not be deemed to have repealed any rules adopted under chapter 16.49 RCW not in conflict with the provisions of this chapter and relating to custom farm slaughterers, and custom slaughtering establishments. For the purpose of this chapter, it shall be

deemed that such rules have been adopted under the provisions of this chapter pursuant to chapter 34.04 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after the effective date of this chapter shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning the adoption of rules. [1969 ex.s. c 145 § 56.]

**16.49A.900 Portions of chapter conflicting with federal requirements—Construction.** If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the department, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the department, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the department. [1969 ex.s. c 145 § 70.]

**16.49A.910 Severability—1969 ex.s. c 145.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 145 § 66.]

**16.49A.920 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 ex.s. c 145 § 65.]

## Chapter 16.50 HUMANE SLAUGHTER OF LIVESTOCK

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**16.50.100 Declaration of policy.** The legislature of the state of Washington finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economy in slaughtering operations; and produces other benefits for producers, processors and consumers which tend to expedite the orderly flow of livestock and their products. It is therefore declared to be the policy of the state of Washington to require that the slaughter of all livestock, and the handling of livestock in connection with slaughter, shall be carried out only by humane methods and to provide that methods of slaughter shall conform generally to those authorized by the Federal Humane

Slaughter Act of 1958, and regulations thereunder. [1967 c 31 § 1.]

**16.50.110 Definitions.** For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Humane method" means either: (a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut; or (b) a method in accordance with the ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(4) "Livestock" means cattle, calves, sheep, swine, horses, mules and goats.

(5) "Packer" means any person engaged in the business of slaughtering livestock.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society and association and every officer, agent or employee, thereof. This term shall import either the singular or plural, as the case may be.

(7) "Slaughterer" means any person engaged in the commercial or custom slaughtering of livestock, including custom farm slaughterers. [1967 c 31 § 2.]

**16.50.120 Humane methods for bleeding or slaughtering livestock required.** No slaughterer or packer shall bleed or slaughter any livestock except by a humane method: *Provided*, That the director may, by administrative order, exempt a person from compliance with this chapter for a period of not to exceed six months if he finds that an earlier compliance would cause such person undue hardship. [1967 c 31 § 3.]

**16.50.130 Administration of chapter—Rules.** The director shall administer the provisions of this chapter. He shall adopt and may from time to time revise rules which shall conform substantially to the rules and regulations promulgated by the secretary of agriculture of the United States pursuant to the Federal Humane Slaughter Act of 1958, Public Law 85-765, 72 Stat. 862 and any amendments thereto. Such rules shall be adopted pursuant to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning the adoption of rules. [1967 c 31 § 4.]

**16.50.140 Manually operated hammer, sledge or poleaxe—Declared inhumane.** The use of a manually operated hammer, sledge or poleaxe is declared to be an inhumane method of slaughter within the meaning of this chapter. [1967 c 31 § 5.]

**16.50.150 Religious freedom—Ritual slaughter defined as humane.** Nothing in this chapter shall be construed to prohibit, abridge, or in any way hinder the

religious freedom of any person or group. Notwithstanding any other provisions of this chapter, ritual slaughter and the handling or other preparation of livestock for ritual slaughter is defined as humane. [1967 c 31 § 10.]

**16.50.160 Injunctions against violations.** The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur, notwithstanding the existence of the other remedies at law. [1967 c 31 § 6.]

**16.50.170 Penalty for violations.** Any person violating any provision of this chapter or of any rule adopted hereunder is guilty of a misdemeanor and subject to a fine of not more than two hundred fifty dollars or confinement in the county jail for not more than ninety days. [1967 c 31 § 7.]

**16.50.900 Severability—1967 c 31.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 31 § 9.]

## Chapter 16.52

### PREVENTION OF CRUELTY TO ANIMALS

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*Cruelty to stock in transit: RCW 81.56.120.*

*Dogs—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.060.*

*Killing, maiming, or disfiguring animals belonging to another: RCW 9.61.040.*

**16.52.010 Definitions—Construction.** In RCW 16.52.010 through 16.52.055, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 the singular shall include the plural; the word "animal" shall be held to include every living creature, except man; the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations in regard to animals transported, owned, or employed by, or in the custody of such corporations, shall be held to be the act and knowledge of such corporations as well as of such agents or employees. [1901 c 146 § 17; RRS § 3200.]

**16.52.020 Humane societies.** Any citizens of the state of Washington who have heretofore, or who shall hereafter, incorporate as a body corporate, under the laws of this state as a humane society or as a society for the prevention of cruelty to animals may avail themselves of the privileges of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180: *Provided*, That the legislative authority in each county may grant exclusive authority to exercise the privileges and authority granted by this section to one or more qualified corporations for a period of up to three years based upon ability to fulfill the purposes of this chapter. [1973 1st ex.s. c 125 § 1; 1901 c 146 § 1; RRS § 3184.]

**16.52.030 Members as peace officers—Powers and duties.** All members and agents, and all officers of any society so incorporated, as shall by the trustees of such society be duly authorized in writing, approved by any judge of the superior court of the county, and sworn in the same manner as are constables and peace officers, shall have power lawfully to interfere to prevent the perpetration of any act of cruelty upon any animal and may use such force as may be necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any of the provisions of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 in the same manner as herein provided for other officers; and may carry the same weapons that such officers are authorized to carry: *Provided*, That all such members and agents shall, when making such arrests, exhibit and expose a suitable badge to be adopted by such society. All persons resisting such specially authorized, approved and sworn officers, agents or members shall be guilty of a misdemeanor. [1901 c 146 § 2; RRS § 3185.]

**16.52.040 Prosecutions.** Any member of such society authorized as provided in RCW 16.52.030, may appear and prosecute in any court of competent jurisdiction for any violation of any of the provisions of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180, whether or not he be an attorney or counsellor at law: *Provided*, That all such

prosecution shall be conducted in the name of the people of the state of Washington. [1901 c 146 § 14; RRS § 3197.]

**16.52.050 Complaint—Search warrant—Arrest.** When complaint is made on oath, to any magistrate authorized to issue warrants in criminal cases that the complainant believes that any of the provisions of law relating to or in any way affecting animals, are being or are about to be violated in any particular building or place, such magistrates shall issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or officer of any incorporated society qualified as provided in RCW 16.52.030, authorizing him to enter and search such building or place, and to arrest any person or persons there present violating or attempting to violate any law relating to or in any way affecting animals, and to bring such person or persons before some court or magistrate of competent jurisdiction within the city or county within which such offense has been committed or attempted to be committed, to be dealt with according to law. [1901 c 146 § 10; RRS § 3193.]

**16.52.055 Certain officers empowered to make arrests for violations.** All sheriffs, constables, police and peace officers are empowered to make arrests for the violation of any provisions of RCW 16.52.010 through 16.52.055, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180, as in other cases of misdemeanor. [1901 c 146 § 3; RRS § 3186.]

**16.52.060 Arrest without warrant.** Any judge, justice of the peace, police judge, sheriff, constable or police officer may arrest any person found committing any of the cruelties hereinbefore enumerated, without a warrant for such arrest, and any officer or member of any humane society, or society for the prevention of cruelty to animals, may cause the immediate arrest of any person engaged in, or who shall have committed such cruelties, upon making oral complaint to any sheriff, constable or police officer, or such officer or member of such society may himself arrest any person found perpetrating any of the cruelties herein enumerated: *Provided*, That said person making such oral complaint or making such arrest shall file with a proper officer a written complaint, stating the act or acts complained of, within twenty-four hours, excluding Sundays and legal holidays, after such arrest shall have been made. [1893 c 27 § 9; RRS § 3204.]

**Reviser's note:** This section being Laws 1893 c 27 § 9, prior sections of the act respecting "cruelties hereinbefore enumerated" are codified as RCW 16.52.065 and 81.56.120.

**16.52.065 Wanton cruelty to fowls.** Whosoever shall wantonly or cruelly pluck, maim, torture, deprive of necessary food or drink, or wantonly kill any fowl or insectivorous bird, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding twenty dollars. [1893 c 27 § 8; RRS § 3203. Formerly RCW 16.52.170.]

**16.52.070 Certain acts as cruelty—Penalty.** Every person who cruelly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills, or causes, procures, authorizes, requests or encourages so to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten or mutilated or cruelly killed, any animal; and whoever having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the same, or unnecessarily fails to provide the same with the proper food, drink, air, light, space, shelter or protection from the weather, or who wilfully and unreasonably drives the same when unfit for labor or with yoke or harness that chafes or galls it, or check rein or any part of its harness too tight for its comfort, or at night when it has been six consecutive hours without a full meal, or who cruelly abandons any animal, shall be guilty of a misdemeanor. [1901 c 146 § 4; RRS § 3187. Prior: 1893 c 27 § 2, part; Code 1881 § 930, part; 1873 p 211 § 133; 1869 p 227 § 127; 1854 p 97 § 121.]

**16.52.080 Transporting or confining in cruel manner—Penalty.** Any person who wilfully transports or confines or causes to be transported or confined any domestic animal or animals in a cruel or unnecessarily painful manner, posture or confinement shall be guilty of a misdemeanor. And whenever any such person shall be taken into custody or be subject to arrest pursuant to a valid warrant therefor by any officer or authorized person, such officer or person may take charge of the animal or animals; and any necessary expense thereof shall be a lien thereon to be paid before the animal or animals may be recovered; and if the expense is not paid, it may be recovered from the owner of the animal or the person guilty. [1974 1st ex.s. c 12 § 1; 1901 c 146 § 5; RRS § 3188. Prior: 1893 c 27 § 2, part; Code 1881 § 930, part.]

*Cruelty to stock in transit: RCW 81.56.120.*

**16.52.085 Removal of neglected animals for feeding and restoration to health.** If the county sheriff shall find that said domestic animal has been neglected by its owner, he may authorize the removal of the animal to a proper pasture or other suitable place for feeding and restoring to health. [1974 1st ex.s. c 12 § 2.]

**16.52.090 Docking horses—Misdemeanor.** Every person who shall cut or cause to be cut, or assist in cutting the solid part of the tail of any horse in the operation known as "docking," or in any other operation for the purpose of shortening the tail or changing the carriage thereof, shall be guilty of a misdemeanor. [1901 c 146 § 6; RRS § 3189. FORMER PART OF SECTION: Code 1881 § 840; 1871 p 103 § 1; RRS § 3206, now codified as RCW 16.52.095.]

**16.52.095 Cutting ears—Misdemeanor.** It shall not be lawful for any person to cut off more than one-half of the ear or ears of any domestic animal such as an ox,

cow, bull, calf, sheep, goat or hog, and any person cutting off more than one-half of the ear or ears of any such animals, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum less than twenty dollars. [Code 1881 § 840; 1871 p 103 § 1; RRS § 3206. Formerly RCW 16.52.090, part.]

**16.52.100 Confinement without food and water.** Any person who shall impound or confine or cause to be impounded or confined any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof shall be guilty of a misdemeanor. In case any domestic animal shall be impounded or confined as aforesaid and shall continue to be without necessary food and water for more than twenty-four consecutive hours, it shall be lawful for any person, from time to time, as it shall be deemed necessary to enter into and open any pound or place of confinement in which any domestic animal shall be confined, and supply it with necessary food and water so long as it shall be confined. Such person shall not be liable to action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall be subject to attachment therefor and shall not be exempt from levy and sale upon execution issued upon a judgment therefor. [1901 c 146 § 12; RRS § 3195.]

**16.52.110 Old or diseased animals at large.** Every owner, driver, or possessor of any old, maimed or diseased horse, cow, mule, or other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot or place of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall be guilty of a misdemeanor: *Provided*, That this shall not apply to any such owner keeping any old or diseased animal belonging to him on his own premises with proper care. Every sick, disabled, infirm or crippled horse, ox, mule, cow or other domestic animal, which shall be abandoned on the public highway, or in any open or enclosed space in any city or township, may, if, after search by a peace officer or officer of such society no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment. [1901 c 146 § 13; RRS § 3196.]

**16.52.120 Fighting, chasing, worrying or injuring animals.** Every person who wantonly or for the amusement of himself or others, or for gain, shall cause any bull, bear, cock, dog, or other animal to fight, chase, worry or injure any other animal, or to be fought, chased, worried or injured by any man or animal, and every person who shall permit the same to be done on any premises under his charge or control; and every person who shall aid, abet, or be present at such fighting, chasing, worrying or injuring of such animal as a spectator, shall be guilty of a misdemeanor. [1901 c 146 § 7; RRS § 3190.]

**16.52.130 Training animals to fight—Attending exhibitions.** Every person who owns, possesses, keeps, or trains any bird or other animal with the intent that such bird or other animal shall be engaged in an exhibition of fighting, or is present at any place, building or tenement, where training is being had or preparations are being made for the fighting of birds or other animals, with the intent to be present at such exhibition, or is present at such exhibition, shall be guilty of a misdemeanor. [1901 c 146 § 8; RRS § 3191.]

**16.52.140 Arrest without warrant.** Any person qualified under RCW 16.52.030 and any sheriff, constable, police or peace officer may enter any place, building or tenement, where there is an exhibition of the fighting of birds or animals or where preparations are being made or training had for such exhibition, and without a warrant arrest all or any persons there present and bring them before some court or magistrate of competent jurisdiction to be dealt with according to law. [1901 c 146 § 11; RRS § 3194.]

**16.52.160 Punishment—Attempt as a misdemeanor.** Every person who shall attempt to do any act or thing which by RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 is made a misdemeanor shall be guilty of a misdemeanor. [1901 c 146 § 9; RRS § 3192. FORMER PART OF SECTION: 1901 c 146 § 16; RRS § 3199, now codified as RCW 16.52.165.]

**16.52.165 Punishment—Conviction of misdemeanor.** Every person convicted of any misdemeanor under RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180, shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution. [1901 c 146 § 16; RRS § 3199. Formerly RCW 16.52.160, part.]

**16.52.180 Limitations on application of chapter.** No part of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 shall be deemed to interfere with any of the laws of this state known as the "game laws," nor shall RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 be deemed to interfere with the right to destroy any venomous reptile or any known as dangerous to life, limb or property, or to interfere with the right to kill animals to be used for food or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated college or university of the state of Washington. [1901 c 146 § 18; RRS § 3201.]

**16.52.190 Poisoning animals.** It shall be unlawful for any person to wilfully or maliciously poison any domestic animal or domestic bird: *Provided*, That the provisions of this section shall not apply to the killing by poison such animal or bird in a lawful and humane

manner by the owner thereof, or by a duly authorized servant or agent of such owner, or by a person acting pursuant to instructions from a duly constituted public authority. [1941 c 105 § 1; RRS § 3207-1. Formerly RCW 16.52.150, part.]

**16.52.193 Poisoning animals—Strychnine sales—Records—Report on suspected purchases.** It shall be unlawful for any person other than a registered pharmacist to sell at retail or furnish to any person any strychnine: *Provided*, That nothing herein shall prohibit county, state or federal agents, in the course of their duties, from furnishing strychnine to any person. Every such registered pharmacist selling or furnishing such strychnine shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the name and address of the purchaser, the quantity of strychnine purchased, the purpose for which it is represented by the purchaser to be required, and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. If any such registered pharmacist shall suspect that any person desiring to purchase strychnine intends to use the same for the purpose of poisoning unlawfully any domestic animal or domestic bird, he may refuse to sell to such person, but whether or not he makes such sale, he shall if he so suspects an intention to use the strychnine unlawfully, immediately notify the nearest peace officer, giving such officer a complete description of the person purchasing, or attempting to purchase, such strychnine. [1941 c 105 § 2; Rem. Supp. 1941 § 3207-2. Formerly RCW 18.67.110.]

**16.52.195 Poisoning animals—Penalty.** Any person violating any of the provisions of RCW 16.52.190 or 16.52.193 shall be guilty of a gross misdemeanor. [1941 c 105 § 3; RRS § 3207-3. Formerly RCW 16.52.150, part.]

## Chapter 16.54 ABANDONED ANIMALS

### Sections

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|-----------|---|
| 16.54.010 | When deemed abandoned.                                    |
| 16.54.020 | Disposition of abandoned animal by person having custody. |
| 16.54.030 | Duty of sheriff—Sale—Disposition of proceeds.             |

**16.54.010 When deemed abandoned.** An animal is deemed to be abandoned under the provisions of this chapter when it is placed in the custody of a veterinarian, boarding kennel owner, or any person for treatment, board, or care and:

(1) Having been placed in such custody for an unspecified period of time the animal is not removed within thirty days after notice to remove the animal has been given to the person who placed the animal in such custody or having been so notified the person depositing the animal refuses or fails to pay agreed upon or reasonable charges for the treatment, board, or care of such animal, or;

(2) Having been placed in such custody for a specified period of time the animal is not removed at the end of such specified period or the person depositing the animal refuses to pay agreed upon or reasonable charges for the treatment, board, or care of such animal. [1955 c 190 § 1.]

**16.54.020 Disposition of abandoned animal by person having custody.** Any person having in his care, custody, or control any abandoned animal as defined in RCW 16.54.010, may deliver such animal to any humane society having facilities for the care of such animals or to any pound maintained by or under contract or agreement with any city or county within which such animal was abandoned. If no such humane society or pound exists within the county the person with whom the animal was abandoned may notify the sheriff of the county wherein the abandonment occurred. [1955 c 190 § 2.]

**16.54.030 Duty of sheriff—Sale—Disposition of proceeds.** It shall be the duty of the sheriff of such county upon being so notified, to dispose of such animal as provided by law in reference to estrays if such law is applicable to the animal abandoned, or if not so applicable then such animal shall be sold by the sheriff at public auction. Notice of any such sale shall be given by posting a notice in three public places in the county at least ten days prior to such public sale. Proceeds of such sale shall be paid to the county treasurer for deposit in the county general fund. [1955 c 190 § 3.]

**Chapter 16.57  
IDENTIFICATION OF LIVESTOCK**

Sections

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16.57.901 Severability—1967 c 240.

**16.57.010 Definitions.** For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(4) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, poultry and rabbits: *Provided*, That livestock when used herein under the provisions of RCW 16.57.160 through 16.57.200, 16.57.220 through 16.57.260, and 16.57.280 through 16.57.330 shall mean and include only cattle of whatever species, breed or age.

(5) "Brand" means a permanent fire brand or any artificial mark approved by the director to be used in conjunction with a brand or by itself.

(6) "Production record brand" means a number brand which shall be used for production identification purposes only.

(7) "Brand inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides and/or the application of any artificial identification such as back tags or ear clips necessary to preserve the identity of the livestock or livestock hides examined. [1967 c 240 § 34; 1959 c 54 § 1.]

**16.57.020 Recording brands—Fee.** The director shall be the recorder of livestock brands and such brands shall not be recorded elsewhere in this state. Any person desiring to register a livestock brand shall apply on a form prescribed by the director. Such application shall be accompanied by a facsimile of the brand applied for and a twenty-five dollar recording fee. The director shall, upon his satisfaction that the application meets the requirements of this chapter and/or rules and regulations adopted hereunder, record such brand. [1971 ex.s. c 135 § 1; 1965 c 66 § 1; 1959 c 54 § 2.]

**16.57.030 Tattoo brands and marks not recordable—Validation of prior recordings.** The director shall not record tattoo brands or marks for any purpose subsequent to the enactment of this chapter. However, all tattoo brands and marks of record on the date of the enactment of this chapter shall be recognized as legal ownership brands or marks. [1959 c 54 § 3.]

**16.57.040 Production record brands.** The director may provide for the use of production record brands. Numbers for such brands shall be issued at the discretion of the director and shall be placed on livestock immediately below the registered ownership brand or any other location prescribed by the director. [1974 1st ex.s. c 64 § 1; 1959 c 54 § 4.]

**16.57.050 Use of unrecorded brand prohibited.** No person shall place a brand on livestock for any purpose unless such brand is recorded in his name. [1959 c 54 § 5.]

**16.57.060 Brands similar to governmental brands not to be recorded.** No brand shall be recorded for ownership purposes which will be applied in the same location and is similar or identical to a brand used or reserved for ownership or health purposes by a governmental agency or the agent of such an agency. [1959 c 54 § 6.]

**16.57.070 Conflicting claims to brand.** The director shall determine conflicting claims between applicants to a brand, and in so doing shall consider the priority of applicants. [1959 c 54 § 7.]

**16.57.080 Renewal—Fee—Effect of failure.** The director shall, on or before the first day of September 1975, and every two years thereafter, notify by letter the owners of brands then of record, that on the payment of twenty-five dollars and application of renewal, the director shall issue written proof of payment allowing the brand owner exclusive ownership and use of such brand for another two year period. The failure of the registered owner to pay the renewal fee by December 31st of the renewal year shall cause such owner's brand to revert to the department. The director may for a period of one year following such reversion, reissue such brand only to the prior registered owner upon payment of twenty-five dollars and an additional fee of ten dollars for renewal subsequent to the regular renewal period. The director may at his discretion, if such brand is not reissued within one year to the prior registered owner, issue such brand to any other applicant. [1974 1st ex.s. c 64 § 2; 1971 ex.s. c 135 § 2; 1965 c 66 § 3; 1961 c 148 § 1; 1959 c 54 § 8.]

**16.57.090 Brand is personal property—Instruments affecting title, recording, effect—Nonliability of director for agents.** A brand is the personal property of the owner of record. Any instrument affecting the title of such brand shall be acknowledged in the presence of the recorded owner and a notary public. The director shall record such instrument upon presentation and

payment of a ten dollar recording fee. Such recording shall be constructive notice to all the world of the existence and conditions affecting the title to such brand. A copy of all records concerning the brand, certified by the director, shall be received in evidence to all intent and purposes as the original instrument. The director shall not be personally liable for failure of his agents to properly record such instrument. [1974 1st ex.s. c 64 § 3; 1965 c 66 § 2; 1959 c 54 § 9.]

**16.57.100 Right to use brand—Brand as evidence of title.** The right to use a brand shall be evidenced by the original certificate issued by the director showing that the brand is of present record or a certified copy of the record of such brand showing that it is of present record. A healed brand of record on livestock shall be prima facie evidence that the recorded owner of such brand has legal title to such livestock and is entitled to its possession: *Provided*, That the director may require additional proof of ownership of any animal showing more than one healed brand. [1971 ex.s. c 135 § 3; 1959 c 54 § 10.]

**16.57.105 Preemptory right to use brand.** Any person having a brand recorded with the department shall have a preemptory right to use such brand and its design under any newly approved method of branding adopted by the director. [1967 c 240 § 38.]

**16.57.110 Size and characteristics of brand.** No brand shall be placed on livestock that is not permanent in nature and of a size that is not readily visible. The director, in order to assure that brands are readily visible, may prescribe the size of branding irons to be used for ownership brands. [1959 c 54 § 11.]

**16.57.120 Removal or alteration of brand—Penalty.** No person shall remove or alter a brand of record on livestock without first having secured the written permission of the director. Violation of this section shall be a gross misdemeanor. [1959 c 54 § 12.]

**16.57.130 Similar brands not to be recorded.** The director shall not record a brand that is identical to a brand of present record; nor a brand so similar to a brand of present record that it will be difficult to distinguish between such brands when applied to livestock. [1959 c 54 § 13.]

**16.57.140 Certified copy of record of brand—Fee.** The owner of a brand of record may procure from the director a certified copy of the record of his brand upon payment of five dollars. [1974 1st ex.s. c 64 § 4; 1959 c 54 § 14.]

**16.57.150 Brand book.** The director shall publish a book to be known as the "Washington State Brand Book", showing all the brands of record. Such book shall contain the name and address of the owners of brands of record and a copy of the brand laws and regulations. Supplements to such brand book showing newly recorded brands, amendments or newly adopted regulations, shall be published biennially, or prior



thereto at the discretion of the director: *Provided*, That whenever he deems it necessary, the director may issue a new brand book. [1974 1st ex.s. c 64 § 5; 1959 c 54 § 15.]

**16.57.160 Brand inspection—Mandatory, when.** Brand inspection of cattle shall be mandatory at the following points:

(1) Prior to being moved out of state to any point where brand inspection is not maintained by the director, directly or in agreement with another state.

(2) Subsequent to delivery to a public livestock market and prior to sale at such public livestock market unless such cattle are exempt from brand inspection by law or regulations adopted by the director because of prior brand inspection or if such cattle are shipped directly to a public livestock market from another state and accompanied by a brand inspection certificate specifically identifying such cattle issued by the state of origin or a lawful agency thereof.

(3) Prior to slaughter at any point of slaughter unless such cattle are exempt from such brand inspection by law or regulations adopted by the director because of prior brand inspection or if such cattle are immediate slaughter cattle shipped directly to a point of slaughter from another state and accompanied by a brand inspection certificate specifically identifying such cattle issued by the state of origin or a lawful agency thereof.

(4) Prior to the branding of any cattle except as otherwise provided by law or regulation.

(5) Prior to the sale of any cattle except as otherwise provided by law or regulation.

The director may by regulation adopted subsequent to a public hearing designate any other point for mandatory brand inspection of cattle or the furnishing of proof that cattle passing or being transported through such points have been brand inspected and are lawfully being moved. Further, the director may stop vehicles carrying cattle to determine if such cattle are identified or branded as immediate slaughter cattle, and if so that such cattle are not being diverted for other purposes to points other than the specified point of slaughter. [1971 ex.s. c 135 § 4; 1959 c 54 § 16.]

**16.57.165 Agreements with others to perform brand inspection.** The director may, in order to reduce the cost of brand inspection to livestock owners, enter into agreements with any qualified county, municipal, or other local law enforcement agency, or qualified individuals for the purpose of performing brand inspection in areas where department brand inspection may not readily be available. [1971 ex.s. c 135 § 6.]

**16.57.170 Examination of livestock, hides, records.** The director may enter at any reasonable time any slaughterhouse or public livestock market to make an examination of the brands on livestock or hides, and may enter at any reasonable time an establishment where hides are held to examine them for brands. The director may enter any of these premises at any reasonable time to examine all books and records required by

law in matters relating to brand inspection or other methods of livestock identification. [1959 c 54 § 17.]

**16.57.180 Search warrants.** Should the director be denied access to any premises or establishment where such access was sought for the purposes set forth in RCW 16.57.170, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises or establishment for said purposes. The court may upon such application, issue the search warrant for the purposes requested. [1959 c 54 § 18.]

**16.57.200 Duty of owner or agent on brand inspection.** Any owner or his agent shall make the brand or brands on livestock being brand inspected readily visible and shall cooperate with the director to carry out such brand inspection in a safe and expeditious manner. [1959 c 54 § 20.]

**16.57.210 Arrest without warrant.** The director shall have authority to arrest any person without warrant anywhere in the state found in the act of, or whom he has reason to believe is guilty of, driving, holding, selling or slaughtering stolen livestock. Any such person arrested by the director shall be turned over to the sheriff of the county where the arrest was made, as quickly as possible. [1959 c 54 § 21.]

**16.57.220 Charges for brand inspection—Payable, when—Lien—Schedule of fees to be adopted.** The director shall cause a charge to be made for all brand inspection required under this chapter and rules and regulations adopted hereunder. Such charges shall be paid to the department by the owner or person in possession unless requested by the purchaser and then such brand inspection shall be paid by the purchaser requesting such brand inspection. Such inspection charges shall be due and payable at the time brand inspection is performed and if not shall constitute a prior lien on the livestock or livestock hides brand inspected until such charge is paid. The director in order to best utilize the services of the department in performing brand inspection shall establish schedules by days and hours when a brand inspector will be on duty or perform brand inspection at established inspection points. The fees for brand inspection performed at inspection points according to schedules established by the director shall be not less than twenty cents nor more than thirty cents as prescribed by the director subsequent to a hearing. Fees for brand inspection performed by the director at points other than those designated by the director or not in accord with the schedules established by him shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. Such schedule of fees shall be established subsequent to a hearing and all regulations concerning fees shall be adopted in accord with the provisions of chapter 34.04 RCW, the Administrative Procedure Act, concerning the adoption of rules as enacted or hereafter amended. [1971 ex.s. c 135 § 5; 1967 c 240 § 35; 1959 c 54 § 22.]

**Temporary increase in fee:** "The brand inspection fee for cattle as established under the provisions of RCW 16.57.220 and in effect on the day previous to the effective date of this 1974 amendatory act shall be increased to thirty-five cents and such increase of five cents shall remain in effect until December 31st, 1975." [1974 1st ex.s. c 64 § 6.]

**Effective date—1974 1st ex.s. c 64:** "The provisions of section 6 of this 1974 amendatory act are 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 immediately." [1974 1st ex.s. c 64 § 7.]

**16.57.230 Charges for brand inspection—Actual inspection required.** No person shall collect or make a charge for brand inspection of livestock unless there has been an actual brand inspection of such livestock by the director. [1959 c 54 § 23.]

**16.57.240 Record of livestock.** Any person purchasing, selling, holding for sale, trading, bartering, transferring title, slaughtering, handling, or transporting livestock shall keep a record on forms prescribed by the director. Such forms shall show the number, specie, brand or other method of identification of such livestock and any other necessary information required by the director. Such records shall be made in triplicate; the original shall be forwarded to the director forthwith, one copy shall accompany the livestock to its destination and one copy shall be kept by the person handling the transaction for a period of at least twelve months following the transaction and shall be subject to inspection at any time by the director or any peace officer or member of the state patrol: *Provided*, That in the following instances only, livestock may be moved or transported within this state without being accompanied by a certificate of permit or an official brand inspection certificate or bill of sale:

(1) When such livestock is moved or transported upon lands under the exclusive control of the person moving or transporting such livestock;

(2) When such livestock is being moved or transported for temporary grazing or feeding purposes and has the registered brand of the person having or transporting such livestock, or accompanied by a certificate of permit. [1959 c 54 § 24.]

**16.57.260 Removal from state—Inspection certificate required.** It shall be unlawful for any person to remove or cause to be removed or accept for removal from this state, any livestock which is not accompanied at all times by an official brand inspection certificate issued by the director on such livestock. [1959 c 54 § 26.]

**16.57.270 Unlawful to refuse assistance in establishing identity of livestock.** It shall be unlawful for any person moving or transporting livestock in this state to refuse to assist the director or any peace officer in establishing the identity of such livestock being moved or transported. [1959 c 54 § 27.]

**16.57.275 Transporting cattle carcass or primal part—Certificate of permit required.** Any cattle carcass, or primal part thereof, of any breed or age being

transported in this state from other than a state or federal licensed and inspected slaughterhouse or common carrier hauling for such slaughterhouse, shall be accompanied by a certificate of permit signed by the owner of such carcass or primal part thereof and, if such carcass or primal part is delivered to a facility custom handling such carcasses or primal part thereof, such certificate of permit shall be deposited with the owner or manager of such custom handling facility and such certificate of permit shall be retained for a period of one year and be made available to the department for inspection during reasonable business hours. The owner of such carcass or primal part thereof shall mail a copy of the said certificate of permit to the department within ten days of said transportation. [1967 c 240 § 37.]

**16.57.280 Possession of livestock marked with another's brand.** No person shall have in his possession any livestock marked with a recorded brand or tattoo of another person unless:

(1) Such livestock bears his own healed recorded brand, or

(2) Such livestock is accompanied by a certificate of permit from the owner of the recorded brand or tattoo, or

(3) Such livestock is accompanied by a brand inspection certificate, or

(4) Such livestock is accompanied by a bill of sale from the previous owner or other satisfactory proof of ownership. [1959 c 54 § 28.]

**16.57.290 Estrays declared.** All unbranded cattle and those bearing brands not recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit, and those bearing brands recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit signed by the owner of the brand when presented for inspection, are hereby declared estrays, unless other satisfactory proof of ownership is presented showing the person presenting them to be lawfully in possession. Such estrays shall be sold by the director or his representative who shall give the purchasers a bill of sale therefor. [1967 ex.s. c 120 § 6; 1959 c 54 § 29.]

**16.57.300 Disposition of proceeds of sale of estrays.** The proceeds from the sale of such estrays, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of estrays at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell such livestock. If such consignor fails to establish legal ownership or the right to sell such livestock, such proceeds shall be paid to the director to be disposed of as any other stray proceeds. [1959 c 54 § 30.]

**16.57.310 Notice of sale—Claim on proceeds.** When a person has been notified by registered mail that animals bearing his recorded brand have been sold by the director, he shall present to the director a claim on the proceeds within ten days from the receipt of the notice or the director may decide that no claim exists. [1959 c 54 § 31.]

**16.57.320 Disposition of proceeds of sale when no proof of ownership—Penalty for accepting proceeds after sale, trade, etc.** If, after the expiration of one year from the date of sale, the person presenting the animals for inspection has not provided the director with satisfactory proof of ownership, the proceeds from the sale shall be paid on the claim of the owner of the recorded brand. However, it shall be a gross misdemeanor for the owner of the recorded brand to knowingly accept such funds after he has sold, bartered or traded such animals to the claimant or any other person. [1959 c 54 § 32.]

**16.57.330 Disposition of proceeds of sale when no claim made.** If, after the expiration of one year from the date of sale, no claim is made, the money shall be credited to the department of agriculture to be expended in carrying out the provisions of this chapter. [1959 c 54 § 33.]

**16.57.340 Reciprocal agreements—When livestock from another state an estray, sale.** The director shall have the authority to enter into reciprocal agreements with any or all states to prevent the theft, misappropriation or loss of identification of livestock. The director may declare any livestock which is shipped or moved into this state from such states estrays if such livestock is not accompanied by the proper official brand certificate or other such certificates required by the law of the state of origin of such livestock. The director may hold such livestock subject to all costs of holding or sell such livestock and send the funds, after the deduction of the cost of such sale, to the proper authority in the state of origin of such livestock. [1959 c 54 § 34.]

**16.57.350 Rules—Enforcement of chapter.** The director, but not his duly appointed representatives, may adopt such rules and/or regulations as are necessary to carry out the purposes of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and/or rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out duties imposed on him by this chapter and/or rules and regulations adopted hereunder. [1959 c 54 § 35.]

**16.57.360 Penalty.** The violation of any provision of this chapter and/or rules and regulations adopted hereunder shall constitute a misdemeanor unless otherwise specified herein. [1959 c 54 § 36.]

**16.57.370 Disposition of fees.** All fees collected under the provisions of this chapter shall be retained and deposited by the director to be used only for the enforcement of this chapter. [1959 c 54 § 37.]

**16.57.380 Horses—Mandatory brand inspection points—Powers of director.** Brand inspection of horses shall be mandatory at the following points:

(1) Prior to being moved out of state to any point where brand inspection is not maintained by the director, directly or in agreement with another state.

(2) Subsequent to delivery to a public livestock market and prior to sale at such public livestock market unless such horses are exempt from brand inspection by law or regulations adopted by the director because of prior brand inspection or if such horses are shipped directly to a public livestock market from another state and accompanied by a brand inspection certificate specifically identifying such horses issued by the state of origin or a lawful agency thereof.

(3) Prior to slaughter at any point of slaughter unless such horses are exempt from such brand inspection by law or regulations adopted by the director because of prior brand inspection or if such horses are immediate slaughter horses shipped directly to a point of slaughter from another state and accompanied by a brand inspection certificate specifically identifying such horses issued by the state of origin or a lawful agency thereof.

(4) Prior to the branding of any horses except as otherwise provided by law or regulation.

(5) Prior to the sale of any horses except as otherwise provided by law or regulation.

The director may by regulation adopted subsequent to a public hearing designate any other point for mandatory brand inspection of horses or the furnishing of proof that horses passing or being transported through such points have been brand inspected and are lawfully being moved. Further, the director may stop vehicles carrying horses to determine if such horses are identified or branded as immediate slaughter horses, and if so that such horses are not being diverted for other purposes to points other than the specified point of slaughter. [1974 1st ex.s. c 38 § 1.]

**16.57.390 Horses—Brand inspection fees and charges.** The director shall cause a charge to be made for all brand inspections of horses required under this chapter and rules and regulations adopted hereunder. Such charges shall be paid to the department by the owner or person in possession unless requested by the purchaser and then such brand inspection shall be paid by the purchaser requesting such brand inspection. Such inspection charges shall be due and payable at the time brand inspection is performed and if not shall constitute a prior lien on the horses or horse hides brand inspected until such charge is paid. The director in order to best utilize the services of the department in performing brand inspections of horses shall establish schedules by days and hours when a brand inspector will be on duty or perform brand inspections of horses at established inspection points. The fees for brand inspections of horses performed at inspection points according to schedules established by the director shall be not more than two dollars as prescribed by the director subsequent to a hearing. Fees for brand inspections of horses performed by the director at points other than those designated by the director or not in accord with

the schedules established by him shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. Such schedule of fees shall be established subsequent to a hearing and all regulations concerning fees shall be adopted in accord with the provisions of chapter 34.04 RCW, the Administrative Procedure Act, concerning the adoption of rules as enacted or hereafter amended. [1974 1st ex.s. c 38 § 2.]

**16.57.400 Horses—Identification certificates—Exemption from brand inspection—Fees.** The director may provide by rules and regulations adopted pursuant to chapter 34.04 RCW for the issuance of individual horse identification certificates or other means of horse identification deemed appropriate. Such certificates or other means of identification shall be valid only for the use of the horse owner in whose name it is issued.

Horses identified pursuant to the provisions of this section and the rules and regulations adopted hereunder shall not be subject to brand inspection except when sold at points provided for in RCW 16.57.380. The director shall charge an annual fee for the certificates or other means of identification authorized pursuant to this section and no identification shall be issued until the director has received the fee. The schedule of fees shall be established in accordance with the provisions of chapter 34.04 RCW. [1974 1st ex.s. c 38 § 3.]

**16.57.900 Severability—1959 c 54.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 54 § 38.]

**16.57.901 Severability—1967 c 240.** See note following RCW 43.23.010.

### Chapter 16.58

#### IDENTIFICATION OF CATTLE THROUGH LICENSING OF CERTIFIED FEED LOTS

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16.58.900 Chapter as cumulative and nonexclusive.  
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**16.58.010 Purpose.** The purpose of this chapter is to expedite the movement of cattle from producers to the point of slaughter without losing the ownership identity of such cattle, and further to provide for fair and economical methods of identification of cattle in such commercial feed lots based on the necessary actual costs to the department of agriculture. [1971 ex.s. c 181 § 1.]

**16.58.020 Definitions.** For the purpose of this chapter:

(1) "Certified feed lot" means any place, establishment, or facility commonly known as a commercial feed lot, cattle feed lot, or the like, which complies with all of the requirements of this chapter, and any regulations adopted pursuant to the provisions of this chapter and which holds a valid license from the director as hereinafter provided.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his duly authorized representative.

(4) "Licensee" means any persons licensed under the provisions of this chapter.

(5) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be. [1971 ex.s. c 181 § 2.]

**16.58.030 Rules and regulations—Interference with director proscribed.** The director may adopt such rules and regulations as are necessary to carry out the purpose of this chapter. The adoption of such rules shall be subject to the provisions of this chapter and rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out any duties imposed upon him by this chapter or rules and regulations adopted hereunder. [1971 ex.s. c 181 § 3.]

**16.58.040 Certified feed lot license—Required—Application, contents.** On or after August 9, 1971, any person desiring to engage in the business of operating one or more certified feed lots shall obtain an annual license from the director for such purpose. The application for a license shall be on a form prescribed by the director and shall include the following:

(1) The number of certified feed lots the applicant intends to operate and their exact location and mailing address;

(2) The legal description of the land on which the certified feed lot will be situated;

(3) A complete description of the facilities used for feeding and handling of cattle at each certified feed lot;

(4) The estimated number of cattle which can be handled for feeding purposes at each such certified feed lot; and

(5) Any other information necessary to carry out the purpose and provisions of this chapter and rules or regulations adopted hereunder. [1971 ex.s. c 181 § 4.]

**16.58.050 Certified feed lot license—License fee—Audit fee—Issuance of license or renewal.** The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of one hundred dollars. The annual license application shall also be accompanied by a prepaid audit fee of one hundred and fifty dollars applicable to the first two thousand head of cattle audited by the director for an applicant during the license period. Upon approval of the application by the director and compliance with the provisions of this chapter and rules and regulations adopted hereunder, the applicant shall be issued a license or a renewal thereof. [1971 ex.s. c 181 § 5.]

**16.58.060 Certified feed lot license—Expiration—Additional fee for late renewal, when.** All certified feed lot licenses shall expire on June 30th, subsequent to the date of issue. Any person who fails, refuses, or neglects to apply for renewal of a preexisting license on or before the date of expiration shall be assessed an additional twenty-five dollars which shall be added to the regular license fee and shall be paid before the director may issue a license to the applicant: *Provided*, That such additional fee shall not be assessed if the applicant furnishes an affidavit certifying that he has not engaged in the business of operating a certified feed lot subsequent to the expiration of his license. [1971 ex.s. c 181 § 6.]

**16.58.070 Certified feed lot license—Denial, suspension or revocation of—Procedure.** The director is authorized to deny, suspend, or revoke a license in accord with the provisions of chapter 34.04 RCW if he finds that there has been a failure to comply with any requirement of this chapter or rules and regulations adopted hereunder. Hearings for the revocation, suspension, or denial of a license shall be subject to the provisions of chapter 34.04 RCW concerning contested cases. [1971 ex.s. c 181 § 7.]

**16.58.080 Brand inspection, facilities and help to be furnished for.** Every certified feed lot shall be equipped with a facility or a livestock pen, approved by the director as to location and construction within the said feed lot so that necessary brand inspection can be carried on in a proper, expeditious and safe manner. Each licensee shall furnish the director with sufficient help necessary to carry out brand inspection in the manner set forth above. [1971 ex.s. c 181 § 8.]

**16.58.090 Certain cattle exempt from brand inspection.** Any cattle or lot of cattle owned or fed by a certified feed lot and delivered to or received from such certified feed lot and accompanied by a brand inspection certificate issued by the director, another state or

any agency authorized by law to issue such brand inspection certificates, shall not be subject to brand inspection if the director is given written assurance, upon a form provided by the director, by said certified feed lot that such cattle or lot of cattle have not been commingled with uninspected cattle. [1971 ex.s. c 181 § 9.]

**16.58.100 Audit—Purpose.** The director shall each year conduct an audit of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. Such audit shall be for the purpose of determining if such cattle correlate with the brand inspection certificates issued in their behalf and that the certificate of assurance furnished the director by the licensee correlates with his assurance that brand inspected cattle were not commingled with uninspected cattle. [1971 ex.s. c 181 § 10.]

**16.58.110 Records—Audit of.** All certified feed lots shall furnish the director with records as requested by him from time to time on all cattle entering or on feed in said certified feed lots and dispersed therefrom. All such records shall be subject to audit by the director for the purpose of maintaining the integrity of the identity of all such cattle. The director shall cause such audits to be made only during regular business hours except in an emergency to protect the interest of the owners of such cattle. [1971 ex.s. c 181 § 11.]

**16.58.120 Records when more than one certified feed lot.** The licensee shall maintain sufficient records as required by the director so that a true audit can be properly performed at each certified feed lot, if said licensee operates more than one certified feed lot. [1971 ex.s. c 181 § 12.]

**16.58.130 Costs when audit covers cattle not included in prepaid fee—Arrears.** Each licensee shall pay to the director the actual necessary costs he incurs in performing audits at certified feed lots in excess of the first two thousand head of cattle as prepaid under RCW 16.58.050. The cost charged by the director shall be actual and necessary and shall be established by regulation subsequent to a public hearing. Payment for such audit shall be made by the licensee within fifteen days of billing by the director. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. Further, the director shall not renew a certified feed lot license if an applicant is in arrears as to his audit payments. [1971 ex.s. c 181 § 13.]

**16.58.140 Disposition of fees.** All fees provided for in this chapter shall be retained by the director for the purpose of enforcing and carrying out the purpose and provisions of this chapter. [1971 ex.s. c 181 § 14.]

**16.58.150 Situations when no brand inspection required.** No brand inspection shall be required when cattle are moved or transferred from one certified feed lot to another or the transfer of cattle from a certified feed lot to a point within this state, or out of state

where this state maintains brand inspection, for the purpose of immediate slaughter. [1971 ex.s. c 181 § 15.]

**16.58.160 Suspension of license awaiting audit.** The director shall, when a certified feed lot's conditions become such that the integrity of an audit conducted of the cattle therein becomes doubtful, suspend such certified feed lot's license until such time as the director can conduct a valid audit as required to carry out the purpose of this chapter. [1971 ex.s. c 181 § 16.]

**16.58.170 General penalties—Subsequent offenses.** Any person who violates the provisions of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and shall be guilty of a gross misdemeanor for any second or subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1971 ex.s. c 181 § 17.]

**16.58.900 Chapter as cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 181 § 18.]

**16.58.910 Severability—1971 ex.s. c 181.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances shall not be affected. [1971 ex.s. c 181 § 19.]

## Chapter 16.60 FENCES

### Sections

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**16.60.010 Lawful fence defined.** The following shall be considered lawful fences in this state: Post and rail or plank fences, five feet high, made of sound posts five inches in diameter, set substantially in the ground, not more than ten feet apart, with four planks not less than one inch thick and six inches wide, securely fastened by nails or otherwise, said planks not more than nine inches apart. Posts and rail fences, with posts not more than ten feet apart and rails not less than four inches wide (five of them) made in all other respects the same

as the first described in this section. Worm fences made in the usual way, of sound, substantial rails or poles, five feet high, including riders with stakes firmly set in the ground and spaces no greater than in post and plank or rail fences, except the two lower spaces which shall not be more than four inches, and the top spaces between riders, not to be more than sixteen inches. Ditch and pole, or board or rail fence, shall be made of a ditch not less than four feet wide on top and three feet deep, embankment thrown up on the inside of the ditch, with substantial posts set in the embankment not more than ten feet apart, and a plank, pole, or rail securely fastened to said posts, at least seven feet high from the bottom of the ditch. [Code 1881 § 2488; 1873 p 447 § 1; 1871 p 63 § 1; 1869 p 323 § 1; RRS § 5441. FORMER PART OF SECTION: Code 1881 § 2489; 1873 p 447 § 2; 1871 p 64 § 2; 1869 p 324 § 2; RRS § 5442, now codified as RCW 16.60.011.]

**16.60.011 Other lawful fences.** All other fences as strong and as well calculated to protect inclosures as either of those described in RCW 16.60.010 shall be lawful fences. [Code 1881 § 2489; 1873 p 447 § 2; 1871 p 64 § 2; 1869 p 324 § 2; RRS § 5442. Formerly RCW 16.60.010, part.]

**16.60.015 Liability for damages—Restraint—Code 1881.** Any person making and maintaining in good repair around his or her enclosure or enclosures, any fence such as is described in RCW 16.60.010 and 16.60.011, may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals, so trespassing, may be taken and held as security for the payment of such damages and costs: *Provided*, That such person shall have such fences examined and the damages assessed by three reliable, disinterested parties and practical farmers, within five days next after the trespass has been committed: *And, provided further*, That if, before trial, the owner of such trespassing animal or animals, shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded. [Code 1881 § 2490; 1873 p 447 § 3; 1871 p 64 § 3; 1869 p 324 § 3; RRS § 5443.]

*Liability for damages—Restraint—1925 act: RCW 16.04.010.*

**16.60.020 Partition fence—Reimbursement.** When any fence has been, or shall hereafter be, erected by any person on the boundary line of his land and the person owning land adjoining thereto shall make, or cause to be made, an inclosure, so that such fence may also answer the purpose of inclosing his ground, he shall pay the owner of such fence already erected one-half of the value of so much thereof as serves for a partition fence between them: *Provided*, That in case such fence has



woven wire or other material known as hog fencing, then the adjoining owner shall not be required to pay the extra cost of such hog fencing over and above the cost of erecting a lawful fence, as by law defined, unless such adjoining owner has his land fenced with hog fencing and uses the partition fence to make a hog enclosure of his land, then he shall pay to the one who owns said hog fence one-half of the value thereof. [1907 c 13 § 1; Code 1881 § 2491; 1873 p 448 § 4; 1871 p 65 § 4; 1869 p 324 § 4; RRS § 5444.]

*Hog fencing: RCW 16.60.050.*

**16.60.030 Partition fence—Erection—Notice.** When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the interest of one party said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land. [Code 1881 § 2492; 1873 p 448 § 5; 1871 p 65 § 5; 1869 p 325 § 5; RRS § 5445.]

**16.60.040 Partition fence—Failure to build—Recovery of half of cost.** If, after notice has been given by either party and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected, the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party. [Code 1881 § 2493; 1873 p 448 § 6; 1871 p 65 § 6; 1869 p 325 § 6; RRS § 5446.]

**16.60.050 Partition fence—Hog fencing.** The respective owners of adjoining inclosures shall keep up and maintain in good repair all partition fences between such inclosures in equal shares, so long as they shall continue to occupy or improve the same; and in case either of the parties shall desire to make such fence capable of turning hogs and the other party does not desire to use it for such purpose, then the party desiring to use it shall have the right to attach hog-fencing material to the posts of such fence, which hog fencing shall remain the property of the party who put it up, and he may remove it at any time he desires: *Provided*, That he leaves the fence in as good condition as it was when the hog fencing was by him attached, the natural decay of the posts excepted. The attaching of such hog fencing shall not relieve the other party from the duty of keeping in repair his part of such fence, as to all materials used in said fence additional to said hog fencing. [1907 c 13 § 2; Code 1881 § 2494; 1873 p 449 § 7; 1871 p 65 § 7; 1869 p 325 § 7; RRS § 5447.]

*Reimbursement—Hog fencing: RCW 16.60.020.*

**16.60.055 Fence on the land of another by mistake—Removal.** When any person shall unwittingly or by mistake, erect any fence on the land of another, and when by a line legally determined that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months

after such line has been run as aforesaid: *Provided*, That when the fence to be removed forms any part of a fence enclosing a field of the other party having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run. [Code 1881 § 2495; 1873 p 449 § 8; 1871 p 65 § 8; 1869 p 325 § 8; RRS § 5448. Formerly RCW 16.60.070.]

**16.60.060 Partition fence—Discontinuance.** When any party shall wish to lay open his inclosure, he shall notify any person owning adjoining inclosures, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such enclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in RCW 16.60.055. [Code 1881 § 2496; 1873 p 449 § 9; 1871 p 65 § 9; 1869 p 325 § 9; RRS § 5449.]

**16.60.062 Assessing value of partition fence.** In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in RCW 16.60.020. [Code 1881 § 2497; 1873 p 449 § 10; 1871 p 66 § 10; 1869 p 326 § 10; RRS § 5450.]

**16.60.064 Impeachment of assessment—Damages.** Upon the trial of any cause occurring under the provisions of RCW 16.60.010 through 16.60.076, the defendant may impeach any such assessment, and in that case the court or the jury shall determine the damages. [Code 1881 § 2498; 1873 p 449 § 11; 1871 p 66 § 11; 1869 p 326 § 11; RRS § 5451.]

**16.60.075 Damages by breachy animals.** The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals, that may be in company with such animal. [Code 1881 § 2499; 1873 p 449 § 12; 1871 p 66 § 12; 1869 p 326 § 12; RRS § 5452. Formerly RCW 16.04.090, part. FORMER PART OF SECTION: Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453, now codified as RCW 16.60.076.]

**16.60.076 Proof.** In case of actions for damages under RCW 16.60.010 through 16.60.076, it shall be sufficient to prove that the fence was lawful when the break was made. [Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453. Formerly RCW 16.04.090, part.]

**16.60.080 Temporary gate across highway.** Whenever any inhabitant of this state shall have his fences removed by floods or destroyed by fire, the county commissioners of the county in which he resides shall have power to grant a license or permit for him or her to put a convenient gate or gates across any highway for a limited period of time, to be named in their order, in



order to secure him from depredations upon his crops until he can repair his fences, and they shall grant such license or permit for no longer period than they may think absolutely necessary. [Code 1881, Bagley's Supp., p 25 § 1; 1871 p 103 § 1; RRS § 5459. FORMER PART OF SECTION: Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460, now codified as RCW 16.60.085.]

**16.60.085 Temporary gate across highway—Auditor may grant permit.** It shall be lawful for the auditor of any county to grant such permit in vacation, but his license shall not extend past the next meeting of the commissioner's court. [Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460. Formerly RCW 16.60.080, part.]

**16.60.090 Failure to remove gate—Penalty.** Any person retaining a gate across the highway after his license shall expire, shall be subject to a fine of one dollar for the first day and fifty cents for each subsequent day he shall retain the same, and it may be removed by the road supervisor, as an obstruction, at the cost of the person placing or keeping it upon the highway. [Code 1881, Bagley's Supp., p 25 § 3; 1871 p 104 § 3; RRS § 5461.]

**16.60.095 Fees.** The fees of the auditor under RCW 16.60.080 through 16.60.095 shall be paid by the applicant. [Code 1881, Bagley's Supp., p 25 § 4; 1871 p 104 § 4.]

### Chapter 16.65 PUBLIC LIVESTOCK MARKETS

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**16.65.010 Definitions.** For the purposes of this chapter:

(1) The term "public livestock market" means any place, establishment or facility commonly known as a "public livestock market", "livestock auction market", "livestock sales ring", yards selling on commission, or the like, conducted or operated for compensation or profit as a public livestock market, consisting of pens or other enclosures, and their appurtenances in which livestock is received, held, sold, kept for sale or shipment: *Provided*, That it does not include a farmer selling his own livestock on his own premises by auction or any other method, or a farmers cooperative association or an association of livestock breeders when any class of their own livestock is assembled and offered for sale at a special sale on an occasional and seasonal basis under such association's management and responsibility, and such special sale has been approved by the director in

writing: *Provided*, That such special sale shall be subject to brand and health inspection requirements as herein provided for sales at public livestock markets.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his duly authorized representative.

(4) "Licensee" means any person licensed under the provisions of this chapter.

(5) "Livestock" includes horses, mules, burros, cattle, sheep, swine, and goats.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(7) "Stockyard" means any place, establishment, or facility commonly known as a stockyard consisting of pens or other enclosures and their appurtenances in which livestock services such as feeding, watering, weighing, sorting, receiving and shipping are offered to the public: *Provided*, That stockyard shall not include any facilities where livestock is offered for sale at public auction, feed lots, or quarantined registered feed lots.

(8) "Packer" means any person engaged in the business of slaughtering, manufacturing, preparing meat or meat products for sale, marketing meat, meat food products or livestock products.

(9) "Deputy state veterinarian" means a graduate veterinarian authorized to practice in the state of Washington and appointed or deputized by the director as his duly authorized representative. [1961 c 182 § 1; 1959 c 107 § 1.]

**16.65.020 Supervision of markets—Rules and regulations—Interference with director's duties.** Public livestock markets shall be under the direction and supervision of the director, and the director, but not his duly authorized representative, may adopt such rules and regulations as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out any duties imposed upon him by this chapter or rules and regulations adopted hereunder. [1959 c 107 § 2.]

**16.65.030 Market license required—Application, contents—Fee—Issuance or renewal—Where and when valid.** On and after the effective date of this chapter no person shall operate a public livestock market without first having obtained a license from the director. Application for such license or renewal thereof shall be in writing on forms prescribed by the director, and shall include the following:

(1) A legal description of the property upon which the public livestock market shall be located.

(2) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens and all facilities the applicant proposes to use in the operation of such public livestock market.

(3) A detailed statement showing all the assets and liabilities of the applicant.

(4) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(5) The weekly or monthly sales day or days on which the applicant proposes to operate his public livestock market sales.

(6) Projected source and quantity of livestock, by county, anticipated to be handled.

(7) Projected income and expense statements for the first year's operation.

(8) Facts upon which are based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(9) Such other information as the director may reasonably require.

The director shall after public hearing as provided by chapter 34.04 RCW grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to all requirements and giving reasonable consideration at the same hearing to:

(1) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application.

(2) The present market services elsewhere available to the trade area proposed to be served.

Such application shall be accompanied by a license fee of one hundred dollars. Any applicant operating more than one public livestock market shall make a separate application for a license to operate each such public livestock market, and each such application shall be accompanied by a license fee of one hundred dollars. Upon the approval of the application by the director and compliance with the provisions of this chapter, the applicant shall be issued a license or renewal thereof. Any license issued under the provisions of this chapter shall only be valid at location and for the sales day or days for which the license was issued. [1971 ex.s. c 192 § 1; 1967 ex.s. c 120 § 5; 1961 c 182 § 2; 1959 c 107 § 3.]

**Reviser's note:** The "effective date of this chapter" (1959 c 107) was midnight June 10, 1959, see preface 1959 session laws.

**16.65.040 Market license required—Expiration—Renewal—Fee.** All licenses provided for in this chapter shall expire on March 1st subsequent to the date of issue. Any person who fails, refuses, or neglects to apply for a renewal of a preexisting license on or before the date of expiration, shall pay a penalty of twenty-five dollars, which shall be added to the regular one hundred dollar license fee, before such license may be renewed by the director. [1959 c 107 § 4.]

**16.65.050 Disposition of fees.** All fees provided for under this chapter shall be retained by the director for the purpose of enforcing this chapter. [1959 c 107 § 5.]

**16.65.060 License to be posted.** The licensee's license shall be posted conspicuously in the main office of such licensee's public livestock market. [1959 c 107 § 6.]

**16.65.080 Denial, suspension, revocation of license—Procedure.** (1) The director is authorized to deny, suspend, or revoke a license in the manner prescribed herein, when there are findings by the director that any licensee (a) has been guilty of fraud or misrepresentation as to titles, charges, numbers, brands, weights, proceeds of sale, or ownership of livestock; (b) has violated any of the provisions of this chapter or rules and regulations adopted hereunder; (c) has violated any laws of the state that require health or brand inspection of livestock; (d) has violated any condition of the bond, as provided in this chapter. However, the director may deny a license if the applicant refuses to accept the sales day or days allocated to him under the provisions of this chapter.

(2) In all proceedings for revocation, suspension, or denial of a license the licensee or applicant shall be given an opportunity to be heard in regard to such revocation, suspension or denial of a license. The director shall give the licensee or applicant twenty days' notice in writing and such notice shall specify the charges or reasons for such revocation, suspension or denial. The notice shall also state the date, time and place where such hearing is to be held. Such hearings shall be held in the city where the licensee has his principal place of business, or where the applicant resides, unless some other place be agreed upon by the parties, and the defendant may be represented by counsel.

(3) The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents anywhere in the state. The applicant or licensee shall have opportunity to be heard, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be recorded, and may be taken by deposition under such rules as the director may prescribe.

(4) The director shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, together with a record of all of the evidence, and serve upon the accused a copy of such findings and conclusions. [1971 ex.s. c 192 § 2; 1961 c 182 § 3; 1959 c 107 § 8.]

*Appeal from denial, revocation, suspension of license: RCW 16.65.450.*

**16.65.090 Brand inspection—Consignor's fee—Minimum fee chargeable to licensee.** The director shall provide for brand inspection. When such brand inspection is required the licensee shall collect from the consignor and pay to the department, as provided by law, a fee for brand inspection for each animal consigned to the public livestock market: *Provided*, That if in any one sale day the total fees collected for brand inspection do not exceed forty dollars, then such licensee shall pay forty dollars for such brand inspection or as much thereof as the director may prescribe. [1971 ex.s. c 192 § 3; 1959 c 107 § 9.]

**16.65.100 Brand inspection—Purchaser's fee.** The licensee of each public livestock market shall collect from any purchaser of livestock requesting brand inspection a fee as provided by law for each animal inspected. Such fee shall be in addition to the fee charged to the consignor for brand inspection and shall not apply to the minimum fee chargeable to the licensee. [1959 c 107 § 10.]

**16.65.110 Charge for examining, testing, inoculating, etc.—Minimum fee.** The director shall cause a charge to be made for any examining, testing, treating, or inoculation required by this chapter and rules and regulations adopted hereunder. Such charge shall be paid by the licensee to the department and such charge shall include the cost of the required drugs and a fee no larger than two dollars nor less than fifty cents for administration of such drugs to each animal and such fee shall be set at the discretion of the director. However, if the total fees payable to the department for such examining, testing, treating or inoculation do not exceed the actual cost to the department for such examining, testing, treating, or inoculation, or ten dollars (whichever is greater), the director shall require the licensee to pay the actual cost of such examining, testing, treating, or inoculation, or ten dollars (whichever is greater), to the department. [1959 c 107 § 11.]

**16.65.120 Disposition of proceeds of sale—Limitations on licensee.** A licensee shall not, except as provided in this chapter, pay the net proceeds or any part thereof arising from the sale of livestock consigned to the said licensee for sale, to any person other than the consignor of such livestock except upon an order from a court of competent jurisdiction, unless (1) such licensee has reason to believe that such person is the owner of the livestock; (2) such person holds a valid unsatisfied mortgage or lien upon the particular livestock, or (3) such person holds a written order authorizing such payment executed by the owner at the time of or immediately following the consignment of such livestock. [1959 c 107 § 12.]

**16.65.130 Unlawful use of consignor's net proceeds.** It shall be unlawful for the licensee to use for his own purposes consignor's net proceeds, or funds received by such licensee to purchase livestock on order, through recourse to the so-called "float" in the bank account, or in any other manner. [1959 c 107 § 13.]

**16.65.140 "Custodial account for consignor's proceeds"—Composition, use—Accounts and records.** Each licensee shall establish a custodial account for consignor's proceeds. All funds derived from the sale of livestock handled on a commission or agency basis shall be deposited in that account. Such account shall be drawn on only for the payment of net proceeds to the consignor, or such other person or persons of whom such licensee has knowledge is entitled to such proceeds, and to obtain from such proceeds only the sums due the licensee as compensation for his services as are set out in his tariffs, and for such sums as are necessary

to pay all legal charges against the consignment of livestock which the licensee in his capacity as agent is required to pay for on behalf of the consignor or shipper. The licensee in each case shall keep such accounts and records that will at all times disclose the names of the consignors and the amount due and payable to each from the funds in the custodial account for consignor's proceeds. The licensee shall maintain the custodial account for consignor's proceeds in a manner that will expedite examination by the director and reflect compliance with the requirements of this section. [1971 ex.s. c 192 § 4; 1959 c 107 § 14.]

**16.65.150 Penalty for failure to disclose unsatisfied lien, mortgage.** The delivery of livestock, for the purpose of sale, by any consignor or vendor to a public livestock market without making a full disclosure to the agent or licensee of such public livestock market of any unsatisfied lien or mortgage upon such livestock shall constitute a gross misdemeanor. [1959 c 107 § 15.]

**16.65.160 Delivery of proceeds and invoice to consignor or shipper.** The licensee shall deliver the net proceeds together with an invoice to the consignor or shipper within twenty-four hours after the sale or by the end of the next business day if the licensee is not on notice that any other person or persons have a valid interest in the livestock. [1959 c 107 § 16.]

**16.65.170 Records of licensee—Contents.** The licensee shall keep accurate records which shall be available for inspection to all parties directly interested therein, and such records shall contain the following information:

- (1) The date on which each consignment of livestock was received and sold.
- (2) The name and address of the buyer and seller of such livestock.
- (3) The number and species of livestock received and sold.
- (4) The marks and brands on such livestock as supplied by a brand inspector.
- (5) All statements of warranty or representations of title material to, or upon which, any such sale is consummated.
- (6) The gross selling price of such livestock with a detailed list of all charges deducted therefrom.

Such records shall be kept by the licensee for one year subsequent to the receipt of such livestock. [1967 c 192 § 1; 1959 c 107 § 17.]

**16.65.180 Unjust, unreasonable, discriminatory rates or charges prohibited.** All rates or charges made for any stockyard services furnished at a public livestock market shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. [1959 c 107 § 18.]

**16.65.190 Schedule of rates and charges.** No person shall hereafter operate a public livestock market unless such person has filed a schedule with the application for

license to operate such public livestock market. Such schedule shall show all rates and charges for stockyard services to be furnished by such person at such public livestock market.

(1) Schedules shall be posted conspicuously at the public livestock market, and shall plainly state all such rates and charges in such detail as the director may require, and shall state any rules and regulations which in any manner change, affect, or determine any part of the aggregate of such rates or charges, or the value of the stockyard services furnished. The director may determine and prescribe the form and manner in which such schedule shall be prepared, arranged and posted.

(2) No changes shall be made in rates or charges so filed and published except after thirty days' notice to the director and to the public filed and posted as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect.

(3) No licensee shall charge, demand or collect a greater or a lesser or a different compensation for such service than the rates and charges specified in the schedule filed with the director and in effect at the time; nor shall a licensee refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from properly returning to its members, on a patronage basis, its excess earnings on their livestock); nor shall a licensee extend to any person at such public livestock market any stockyard services except such as are specified in such schedule. [1959 c 107 § 19.]

**16.65.200 Licensee's bond to operate market.** Before the license is issued to operate a public livestock market, the applicant shall execute and deliver to the director a surety bond in a sum as herein provided for, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be a standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules and/or regulations adopted hereunder. Said bond shall be to the state in favor of every consignor and/or vendor creditor whose livestock was handled or sold through or at the licensee's public livestock market: *Provided*, That if such applicant is bonded as a market agency under the provisions of the packers and stockyards act, (7 U.S.C. 181) as amended, on March 20, 1961, in a sum equal to or greater than the sum required under the provisions of this chapter, and such applicant furnishes the director with a bond approved by the United States secretary of agriculture naming the department as trustee, the director may accept such bond and its method of termination in lieu of the bond provided for herein and issue a license if such applicant meets all the other requirements of this chapter.

The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face of such bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until such time as the license

of the licensee is revoked for cause or otherwise canceled. The surety on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on such bond upon compliance with the provisions of RCW 19.72.110 concerning notice and proof of service, as enacted or hereafter amended, but this shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110 concerning notice and proof of service as enacted or hereafter amended, and unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license. [1971 ex.s. c 192 § 5; 1961 c 182 § 4. Prior: 1959 c 107 § 20.]

**16.65.210 Licensee's bond to operate market—Amount determined by prior business operations—Minimum amount.** The sum of the bond to be executed by an applicant for a public livestock market license shall be determined in the following manner:

(1) Determine the dollar volume of business carried on, at, or through, such applicant's public livestock market in the twelve-month period prior to such applicant's application for a license.

(2) Divide such dollar volume of business by the number of official sale days granted such applicant's public livestock market, as herein provided, in the same twelve-month period provided for in subsection (1).

(3) Bond amount shall be that amount obtained by the formula in subsection (2) except that it shall not be an amount less than ten thousand dollars and if that amount shall exceed fifty thousand then that portion above fifty thousand shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest five thousand figure above that arrived at in the formula. [1971 ex.s. c 192 § 6; 1959 c 107 § 21.]

**16.65.220 Licensee's bond to operate market—Amount when no prior business operations—Minimum and maximum amount.** If the application for a license to operate a public livestock market is from a new public livestock market which has not operated in the past twelve-month period, the director shall determine a bond, in a reasonable sum, that the applicant shall execute in favor of the state, which shall not be less than ten thousand dollars nor greater than twenty-five thousand dollars: *Provided*, That the director may at any time, upon written notice, review the licensee's operations and determine whether, because of increased or decreased sales, the amount of the bond should be altered. [1971 ex.s. c 192 § 7; 1959 c 107 § 22.]

**16.65.230 Licensee's bond to operate market—One bond for each market.** Any licensee operating more than one public livestock market shall execute a bond, as herein provided, for each such licensed public livestock market. [1959 c 107 § 23.]

**16.65.235 Cash or other security in lieu of surety bond.** In lieu of the surety bond required under the provisions of this chapter, an applicant or licensee may

file with the director a deposit consisting of cash or other security acceptable to the director. The director may adopt rules and regulations necessary for the administration of such security. [1973 c 142 § 3.]

**16.65.240 Action on bond—Fraud of licensee.** Any vendor or consignor creditor claiming to be injured by the fraud of any licensee may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud. [1959 c 107 § 24.]

**16.65.250 Action on bond—Failure to comply with chapter.** The director or any vendor or consignor creditor may also bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter and the rules and/or regulations adopted hereunder. [1959 c 107 § 25.]

**16.65.260 Licensee's failure to pay vendor, consignor—Complaint—Director's powers and duties.** In case of failure by a licensee to pay amounts due a vendor or consignor creditor whose livestock was handled or sold through or at the licensee's public livestock market, as evidenced by a verified complaint filed with the director, the director may proceed forthwith to ascertain the names and addresses of all vendor or consignor creditors of such licensee, together with the amounts due and owing to them and each of them by such licensee, and shall request all such vendor and consignor creditors to file a verified statement of their respective claims with the director. Such request shall be addressed to each known vendor or consignor creditor at his last known address. [1959 c 107 § 26.]

**16.65.270 Licensee's failure to pay vendor, consignor—Failure of vendor, consignor to file claim.** If a vendor or consignor creditor so addressed fails, refuses or neglects to file in the office of the director his verified claim as requested by the director within sixty days from the date of such request, the director shall thereupon be relieved of further duty or action hereunder on behalf of said producer or consignor creditor. [1959 c 107 § 27.]

**16.65.280 Licensee's failure to pay vendor, consignor—Duties of director when names of creditors not available.** Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all said vendor and consignor creditors, the director, after exerting due diligence and making reasonable inquiry to secure said information from all reasonable and available sources, may make demand on said bond on the basis of information then in his possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered. [1959 c 107 § 28.]

**16.65.290 Licensee's failure to pay vendor, consignor—Settlement, compromise of claims—Demand on bond—Discharge.** Upon ascertaining all claims and statements in the manner herein set forth, the director may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise said claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved. [1959 c 107 § 29.]

**16.65.300 Licensee's failure to pay vendor, consignor—Refusal by surety company to pay demand—Action on bond—New bond, suspension or revocation of license on failure to file.** Upon the refusal of the surety company to pay the demand, the director may thereupon bring an action on the bond in behalf of said vendor and consignor creditors. Upon any action being commenced on said bond, the director may require the filing of a new bond. Immediately upon the recovery in any action on such bond such licensee shall file a new bond. Upon failure to file the same within ten days, in either case, such failure shall constitute grounds for the suspension or revocation of his license. [1959 c 107 § 30.]

**16.65.310 Licensee's failure to pay vendor, consignor—Settlement, compromise—Creditors share—Priority of state's claim.** In any settlement or compromise by the director with a surety company as provided in RCW 16.65.290, where there are two or more consignor and/or vendor creditors that have filed claims, either fixed or contingent, against a licensee's bond, such creditors shall share pro rata in the proceeds of the bond to the extent of their actual damage: *Provided*, That the claims of the state and the department which may accrue from the conduct of the licensee's public livestock market shall have priority over all other claims. [1959 c 107 § 31.]

**16.65.320 Complaints by vendor or consignor—Investigations.** For the purpose of enforcing the provisions of this chapter, the director is authorized to receive verified complaints from any vendor or consignor against any licensee, or agent, or any person assuming or attempting to act as such, and upon receipt of such verified complaint shall have full authority to make any and all necessary investigations relative to such complaint. The director is empowered to administer oaths of verification of such complaints. [1959 c 107 § 32.]

**16.65.330 Investigations—Powers of director.** For the purpose of making investigations as provided for in RCW 16.65.320, the director may enter a public livestock market and examine any records required under the provisions of this chapter. The director shall have full authority to issue subpoenas requiring the attendance of witnesses before him, together with all books, memorandums, papers, and other documents relative to the matters under investigation, and to administer oaths and take testimony thereunder. [1959 c 107 § 33.]

**16.65.340 Testing, examination, etc., of livestock for disease.** The director shall, when livestock is sold, traded, exchanged or handled at or through a public livestock market, require such testing, treating, identifying, examining and record keeping of such livestock by a deputy state veterinarian as in the director's judgment may be necessary to prevent the spread of brucellosis, tuberculosis, paratuberculosis, hog cholera or any other infectious, contagious or communicable disease among the livestock of this state. [1967 c 192 § 2; 1959 c 107 § 34.]

**16.65.350 Examinations, inspections, sanitary and health practices—Suspension, revocation of license.** (1) The director shall perform all tests and make all examinations required under the provisions of this chapter and rules and regulations adopted hereunder: *Provided*, That veterinary inspectors of the United States department of agriculture may be appointed by the director to make such examinations and tests as are provided for in this chapter without bond or compensation, and shall have the same authority and power in this state as a deputy state veterinarian.

(2) The director shall have the responsibility for the direction and control of sanitary practices and health practices and standards and for the examination of animals at public livestock markets. The deputy state veterinarian at any such public livestock market shall notify the licensee or his managing agent, in writing, of insanitary practices or conditions. Such deputy state veterinarian shall notify the director if the improper sanitary practices or conditions are not corrected within the time specified. The director shall investigate and upon finding such report correct shall take appropriate action to hold a hearing on the suspension or revocation of the licensee's license. [1959 c 107 § 35.]

**16.65.360 Facilities—Sanitation—Requirements.** Licensees shall provide facilities and sanitation for the prevention of livestock diseases at their public livestock markets, as follows:

(1) The floors of all pens and alleys that are part of a public livestock market shall be constructed of concrete or similar impervious material and kept in good repair, with a slope of not less than one-fourth inch per foot to adequate drains leading to an approved sewage system: *Provided*, That the director may designate certain pens within such public livestock markets as feeding and holding pens and the floors and alleys of such pens shall not be subject to the aforementioned surfacing requirements.

(2) Feeding and holding pens maintained in an area adjacent to a public livestock market shall be constructed and separated from such public livestock market, in a manner prescribed by the director, in order to prevent the spread of communicable diseases to the livestock sold or held for sale in such public livestock market.

(3) All yards, chutes and pens used in handling livestock shall be constructed of such materials which will render them easily cleaned and disinfected, and such



yards, pens and chutes shall be kept clean, sanitary and in good repair at all times, as required by the director.

(4) Sufficient calf pens of adequate size to prevent overcrowding shall be provided, and such pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(5) All swine pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(6) A water system carrying a pressure of forty pounds and supplying sufficient water to thoroughly wash all pens, floors, alleys and equipment shall be provided.

(7) Sufficient quarantine pens of adequate capacity shall be provided. Such pens shall be used to hold only cattle reacting to brucellosis and tuberculosis or to quarantine livestock with other contagious or communicable diseases and shall be:

(a) hard surfaced with concrete or similar impervious material and shall be kept in good repair;

(b) provided with separate watering facilities;

(c) painted white with the word "quarantine" painted in red letters not less than four inches high on such quarantine pen's gate;

(d) provided with a tight board fence not less than five and one-half feet high;

(e) cleaned and disinfected not later than one day subsequent to the date of sale.

To prevent the spread of communicable diseases among livestock, the director shall have the authority to cause the cleaning and disinfecting of any area or all areas of a public livestock market and equipment or vehicles with a complete coverage of disinfectants approved by the director. [1959 c 107 § 36.]

**16.65.370 Watering, feeding facilities—Unlawful acts.** Pens used to hold livestock for a period of twenty-four hours or more shall have watering and feeding facilities for livestock held in such pens; it shall be unlawful to hold livestock for a period longer than twenty-four hours in such pens without feeding and watering such livestock. [1959 c 107 § 37.]

**16.65.380 Adequate facilities and space required for veterinarians to function.** Public livestock market facilities shall include adequate space and facilities necessary for deputy state veterinarians to properly carry out their functions as prescribed by law and rules and regulations adopted hereunder. [1959 c 107 § 38.]

**16.65.390 Adequate space and facilities required for brand inspectors to function.** Public livestock market facilities shall include space and facilities necessary for brand inspectors to properly carry out their duties, as provided by law and rules and regulations adopted hereunder, in a safe and expeditious manner. [1959 c 107 § 39.]

**16.65.400 Weighing of livestock.** (1) Each licensee shall maintain and operate approved weighing facilities for the weighing of livestock at such licensee's public livestock market.

(2) All dial scales used by the licensee shall be of adequate size to be readily visible to all interested parties and shall be equipped with a mechanical weight recorder.

(3) All beam scales used by the licensee shall be equipped with a balance indicator, a weigh beam and a mechanical weight recorder, all readily visible to all interested parties.

(4) All scales used by the licensee shall be checked for balance at short intervals during the process of selling and immediately prior to the beginning of each sale day.

(5) The scale ticket shall have the weights mechanically imprinted upon such tickets when the weigh beam is in balance during the process of weighing, and shall be issued in triplicate, for all livestock weighed at a public livestock market. A copy of such weight tickets shall be issued to the buyer and seller of the livestock weighed. [1961 c 182 § 5; 1959 c 107 § 40.]

**16.65.410 Packer's interest in market limited.** It shall be unlawful for a packer to own or control more than a twenty percent interest in any public livestock market, directly or indirectly through stock ownership or control, or otherwise by himself or through his agents or employees. [1959 c 107 § 41.]

**16.65.420 Application for sales day for new salesyard, change of or additional sales days, special sales—Considerations for allocation.** (1) Any application for sales days or days for a new salesyard, and any application for a change of sales day or days or additional sales day or days for an existing yard shall be subject to approval by the director, subsequent to a hearing as provided for in this chapter and the director is hereby authorized to allocate these dates and type and class of livestock which may be sold on these dates. In considering the allocation of such sales days, the director shall give appropriate consideration, among other relevant factors, to the following:

(a) The geographical area which will be affected;

(b) The conflict, if any, with sales days already allocated in the area;

(c) The amount and class of livestock available for marketing in the area;

(d) Buyers available to such market;

(e) Any other conditions affecting the orderly marketing of livestock.

(2) No special sales shall be conducted by the licensee unless the licensee has applied to the director in writing fifteen days prior to such proposed sale and such sale date shall be approved at the discretion of the director. [1963 c 232 § 16; 1961 c 182 § 6. Prior: 1959 c 107 § 42.]

**16.65.422 Special sales of purebred livestock.** A producer of purebred livestock may, upon obtaining a permit from the director, conduct a public sale of the purebred livestock on an occasional or seasonal basis on premises other than his own farm. Application for such special sale shall be in writing to the director for his approval at least fifteen days before the proposed



public sale is scheduled to be held by such producer. [1963 c 232 § 17.]

**16.65.423 Limited license, sale of horses and/or mules—Sales days.** The director shall have the authority to issue a license pursuant to the provisions of this chapter limited to the sale of horses and/or mules and to allocate a sales day or days to such licensee. The director is hereby authorized and directed to adopt regulations for facilities and sanitation applicable to such a license. The facility requirements of RCW 16.65.360 shall not be applicable to such licensee's operation as provided for in this section. [1963 c 232 § 18.]

**16.65.424 Additional sales days limited to sales of horses and/or mules.** The director shall have the authority to grant a licensee an additional sales day or days limited to the sale of horses and/or mules and may if requested grant the licensee, by permit, the authority to have the sale at premises other than at his public livestock market if the facilities are approved by the director as being adequate for the protection of the health and safety of such horses and/or mules. For the purpose of such limited sale the facility requirements of RCW 16.65.360 shall not be applicable. [1963 c 232 § 19.]

**16.65.430 Information and records available to director and news services.** Information and records of the licensee that are necessary for the compilation of adequate reports on the marketing of livestock shall be made available to the director or any news service, publishing or broadcasting such market reports. [1959 c 107 § 43.]

**16.65.440 Penalty.** Any person who shall violate any provisions or requirements of this chapter or rules and regulations adopted by the director pursuant to this chapter shall be deemed guilty of a misdemeanor; and any subsequent violation thereafter shall be deemed a gross misdemeanor. [1959 c 107 § 44.]

**16.65.445 Hearings.** The director shall hold public hearings upon a proposal to promulgate any new or amended regulations and all hearings for the denial, revocation, or suspension of a license issued under this chapter or in any other contested case, and shall comply in all respects with chapter 34.04 RCW (administrative procedures act) as now enacted or hereafter amended. [1961 c 182 § 7.]

**16.65.450 Appeal from denial, suspension, revocation of license.** Any licensee or applicant who has had his or its license revoked, suspended or denied by the director and feels himself or itself aggrieved by said order may appeal to the superior court of the county in the state of Washington of the residence of the licensee or applicant where the trial on such appeal shall be held de novo. [1959 c 107 § 46.]

**16.65.900 Severability—1959 c 107.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not

affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 107 § 45.]

**16.65.910 Severability—1963 c 232.** See RCW 15.61.900.

## Chapter 16.67

### WASHINGTON STATE BEEF COMMISSION ACT

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**16.67.010 Short title.** This chapter shall be known and may be cited as the Washington state beef commission act. [1969 c 133 § 1.]

**16.67.020 Purpose of chapter.** This chapter is passed:  
(1) In the exercise of the power of the state to provide for economic development of the state, to promote the welfare of the state, and stabilize and protect the beef industry of the state;

(2) Because the beef and beef products produced in Washington comprise one of the major agricultural crops of Washington, and therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(3) Because it is desirable and expedient to enhance the reputation of Washington beef and beef products in domestic, national and international markets;

(4) Because it is desirable to promote knowledge of the health-giving qualities, food and dietetic value of beef and beef products of the nation and Washington beef and beef products in particular for the expanded development of the beef industry;

(5) Because the stabilizing of the beef industry, the enlargement of its markets, and the increased consumption of beef and beef products are desirable to assure payment of taxes to the state and its subdivisions, to alleviate unemployment and to provide for higher wage

scales for agricultural labor and maintenance of our high standard of living;

(6) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only beef and beef products of the highest standard of quality, the methods and care used in their preparation for market, and the methods of sale and distribution, to increase the amount secured by the producer therefor, so they may pay higher wages and pay their taxes, and by such information reduce the cost of marketing and distribution to the extent that the spread between the cost to consumer and the amount received by the producer will be reduced to the minimum absolutely necessary; and

(7) To protect the public by educating it in reference to the various cuts and grades of Washington beef and the uses to which each should be put. [1969 c 133 § 19.]

**16.67.030 Definitions.** For the purpose of this chapter:

(1) "Commission" means the Washington state beef commission.

(2) "Director" means the director of agriculture of the state of Washington or his duly appointed representative.

(3) "Ex officio members" means those advisory members of the commission who do not have a vote.

(4) "Department" means the department of agriculture of the state of Washington.

(5) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(6) "Beef producer" means any person who raises, breeds, grows, or purchases cattle or calves for beef production.

(7) "Dairy (beef) producer" means any person who raises, breeds, grows, or purchases cattle for dairy production and who is actively engaged in the production of fluid milk.

(8) "Feeder" means any person actively engaged in the business of feeding cattle and usually operating a feed lot.

(9) "Producer" means any person actively engaged in the cattle industry including beef producers and dairy (beef) producers.

(10) "Washington cattle" shall mean all cattle owned or controlled by affected producers and located in the state of Washington.

(11) "Meat packer" means any person licensed to operate a slaughtering establishment under the provisions of chapter 16.49A RCW as enacted or hereafter amended.

(12) "Livestock salesyard operator" means any person licensed to operate a cattle auction market or salesyard under the provisions of chapter 16.65 RCW as enacted or hereafter amended. [1969 c 133 § 2.]

**16.67.040 Beef commission created—Composition—Quorum—Qualifications of members.** There is hereby created a Washington state beef commission to be thus known and designated. The commission shall

be composed of three beef producers, one dairy (beef) producer, three feeders, one livestock salesyard operator, and one meat packer. In addition there will be one ex officio member without the right to vote from the department of agriculture to be designated by the director thereof.

A majority of voting members shall constitute a quorum for the transaction of any business.

All appointed members as stated in RCW 16.67.060 shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in that phase of the cattle industry he represents for a period of five years, and has during that period derived a substantial portion of his income therefrom, or have a substantial investment in cattle as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of cattle or dressed beef, or a manager or executive officer of such corporation. Producer members of the commission shall not be directly engaged in the business of being a meat packer, or as a feeder, feeding cattle other than their own. Said qualifications must continue throughout each member's term of office. [1969 c 133 § 3.]

**16.67.050 Designation of positions—Terms.** The appointive positions on the commission shall be designated as follows: The three beef producers shall be designated positions one, two and three; the dairy (beef) producer shall be designated position four; the three feeders shall be designated positions five, six and seven; the livestock salesyard operator shall be designated position eight; the meat packer shall be designated position nine.

The regular term of office shall be three years from the date of appointment and until their successors are appointed: *Provided*, That the first terms of the members whose terms began on July 1, 1969 shall be as follows: Positions one, four and seven shall terminate July 1, 1970; positions two, five and eight shall terminate July 1, 1971; positions three, six and nine shall terminate July 1, 1972. [1969 c 133 § 4.]

**16.67.060 Governor to appoint members.** The governor shall appoint the members of the commission. In making such appointments, the governor shall take into consideration recommendations made to him by organizations who represent or who are engaged in the same type of production or business as the person recommended for appointment as a member of the commission.

The appointment shall be carried out immediately, subsequent to June 1, 1969 and members so appointed as set forth in this chapter shall serve for the periods set forth for the original members of the commission in RCW 16.67.050. [1969 c 133 § 5.]

**16.67.070 Vacancies—Per diem and expenses.** In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of such position shall be filled by the governor forthwith.

No member of the commission shall receive any salary or other compensation, but each member shall receive the sum of twenty-five dollars per day for each day spent in actual attendance on or traveling to and from meetings of the commission, or on special assignment for the commission, together with subsistence and traveling expenses at the rate allowed by the law to state employees. [1969 c 133 § 6.]

**16.67.080 Commission records as evidence.** Copies of the proceedings, records, and acts of the commission, when certified by the secretary of the commission and authenticated by the commission seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein. [1969 c 133 § 7.]

**16.67.090 Powers and duties.** The powers and duties of the commission shall include the following:

(1) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(2) To elect a chairman and such other officers as it deems advisable;

(3) To employ and discharge at its discretion a manager, secretary, and such other personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the commission determines are necessary and proper to carry out the purposes of this chapter, and to prescribe their duties and powers and fix their compensation;

(4) To adopt, rescind, and amend rules, regulations and orders for the exercise of its powers hereunder subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as now or hereafter amended;

(5) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the commission. All records, books and minutes of the commission shall be kept at such headquarters;

(6) To require a bond of all commission members and employees of the commission in a position of trust in the amount the commission shall deem necessary. The premium for such bond or bonds shall be paid by the commission from assessments collected. Such bond shall not be necessary if any such commission member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(7) To establish a beef commission revolving fund, such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the commission, except an amount of petty cash for each day's needs not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable; none of the provisions of RCW 43.01.050 as now or hereafter amended shall apply to money collected under this chapter;

(8) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(9) To incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(10) To borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(11) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, expenditures, moneys and other financial transactions made and done pursuant to this chapter. Such records, books and accounts shall be audited at least annually subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year of the state of Washington. A copy of such audit shall be delivered within thirty days after completion thereof to the director, the state auditor and the commission. On such years and in such event the state auditor is unable to audit the records, books and accounts within six months following the close of the fiscal year it shall be mandatory that the commission employ a private auditor to make such audit;

(12) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(13) To cooperate with any other local, state, or national commission, organization or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in work or activities similar to the work and activities of the commission created by this chapter and make contracts and agreements with such organizations or agencies for carrying on joint programs beneficial to the beef industry;

(14) To accept grants, donations, contributions or gifts from any governmental agency or private source for expenditures for any purpose consistent with the provisions of this chapter;

(15) To operate jointly with beef commissions or similar agencies established by state laws in adjoining states. [1969 c 133 § 8.]

*Daily remittance of moneys to treasury—Undistributed receipts fund created, use: RCW 43.01.050.*

**16.67.100 Meetings—Notice.** The commission shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the commission.

The commission shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the commission at least ten days prior to the meeting by public notice of such meeting published in newspapers of general circulation in the state of Washington, by radio and press releases and through trade publications.

The commission shall establish by resolution, the time, place and manner of calling special meetings of the commission with reasonable notice to the members: *Provided*, That, the notice of any special meeting may be waived by a waiver thereof by each member of the commission. [1969 c 133 § 9.]

**16.67.110 Promotional programs, research, rate studies, labeling.** The commission shall provide for programs designed to increase the consumption of beef; develop more efficient methods for the production, processing, handling and marketing of beef; eliminate transportation rate inequalities on feed grains and supplements and other production supplies adversely affecting Washington producers; properly identify beef and beef products for consumers as to quality and origin. For these purposes the commission may:

(1) Provide for programs for advertising, sales promotion and education, locally, nationally or internationally, for maintaining present markets and/or creating new or larger markets for beef. Such programs shall be directed toward increasing the sale of beef without reference to any particular brand or trademark and shall neither make use of false or unwarranted claims in behalf of beef nor disparage the quality, value, sale or use of any other agricultural commodity;

(2) Provide for research to develop and discover the health, food, therapeutic and dietetic value of beef and beef products thereof;

(3) Make grants to research agencies for financing studies, including funds for the purchase or acquisition of equipments and facilities, in problems of beef production, processing, handling and marketing;

(4) Disseminate reliable information founded upon the research undertaken under this chapter or otherwise available;

(5) Provide for rate studies and participate in rate hearings connected with problems of beef production, processing, handling or marketing; and

(6) Provide for proper labeling of beef and beef products so that the purchaser and the consuming public of the state will be readily apprised of the quality of the product and how and where it was processed. [1969 c 133 § 10.]

**16.67.120 Levy of assessment.** There is hereby levied an assessment of ten cents per head on all Washington cattle sold in this state or elsewhere to be paid by the seller at the time of sale: *Provided*, That, if such sale is accompanied by a brand inspection by the department such assessment shall be collected at the same time, place and in the same manner as brand inspection fees. Such fees shall be collected by the regulatory division of the department and transmitted to the commission: *Provided further*, That, if such sale is made without a brand inspection by the department the assessment shall be paid by the seller and transmitted directly to the commission not later than thirty days following the sale. [1969 c 133 § 11.]

**16.67.123 Transfer of cattle by meat packer as sale.** The transfer of cattle owned by a meat packer from a feed lot to a slaughterhouse for slaughter shall be deemed a sale of such cattle for the purpose of chapter 16.67 RCW. Such packer shall pay directly to the beef commission the same assessment as required of all other cattle owners selling cattle. [1971 c 64 § 1.]

**16.67.124 Delivering cattle to lot for custom feeding for slaughter as sale.** For the purpose of chapter 16.67 RCW all cattle delivered to a commercial feed lot for custom feeding for slaughter shall be deemed to constitute a sale of such cattle and the commercial feed lot owner shall pay the assessment for such sale to the beef commission directly as in the case of the sale of any other cattle: *Provided*, That the commercial feed lot owner may recover such assessment fees, paid to the beef commission, in billing the owner of said cattle along with feeding costs: *Provided further*, That any producer paying such an assessment on cattle delivered to a commercial feed lot shall not be obligated to pay an assessment when he sells such fat cattle to a meat packer. [1971 c 64 § 2.]

**16.67.130 Assessments personal debt—Delinquent charge—Civil action to collect.** Any due and payable assessment levied under the provisions of this chapter shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable within thirty days from the date it becomes first due the commission. In the event any such person fails to pay the full amount within such thirty days, the commission shall add to such unpaid assessment an amount of ten percent of the unpaid assessment to defray the cost of collecting the same. In the event of failure of such person to pay such due and payable assessment, the commission may bring civil action against such person in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon and any other additional necessary reasonable costs including attorneys' fees. Such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1969 c 133 § 12.]

**16.67.140 Livestock purchasers to provide list of sellers to commission.** The commission may adopt regulations requiring the purchasers of livestock subject to the assessments under this chapter, to furnish the commission with the names of persons from whom such livestock was purchased. Refusal or failure to furnish the commission with such a list shall constitute a misdemeanor. [1969 c 133 § 13.]

**16.67.150 Sales of milk production animals exempted from assessment.** The assessment provided for in RCW 16.67.130 shall not be applicable to any animal sold for milk production. [1969 c 133 § 14.]

**16.67.160 Liability of commission's assets—Immunity of state, commission employees, etc.** Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member officer, employee or agent of the commission in his individual capacity. The members of the commission including employees of

the commission shall not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member. [1969 c 133 § 15.]

**16.67.170 Promotional printing not restricted by public printer laws.** The restrictive provisions of chapter 43.78 RCW, as now or hereafter amended, shall not apply to promotional printing and literature for the commission. [1969 c 133 § 16.]

*Public printer—Public printing: Chapter 43.78 RCW.*

**16.67.900 Liberal construction—1969 c 133.** This chapter shall be liberally construed. [1969 c 133 § 20.]

**16.67.910 Severability—1969 c 133.** If any provisions hereof are declared invalid, the validity of the remainder hereof of the applicability thereof to any other person, circumstances or thing shall not be affected thereby. [1969 c 133 § 17.]

**16.67.920 Effective date—1969 c 133.** This chapter 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, 1969. [1969 c 133 § 21.]

## Chapter 16.68 DISPOSAL OF DEAD ANIMALS

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**16.68.010 Definitions.** For the purposes of this chapter, unless clearly indicated otherwise by the context:

- (1) "Director" means the director of agriculture;
- (2) "Meat food animal" means cattle, horses, mules, asses, swine, sheep and goats;

(3) "Dead animal" means the body of a meat food animal, or any part or portion thereof: *Provided*, That the following dead animals are exempt from the provisions of this chapter:

(a) Edible products from a licensed slaughtering establishment;

(b) Edible products where the meat food animal was slaughtered under farm slaughter permit;

(c) Edible products where the meat food animal was slaughtered by a bona fide farmer on his own ranch for his own consumption;

(d) Hides from meat food animals that are properly identified as to ownership and brands;

(4) "Carcass" means all parts, including viscera, of a dead meat food animal;

(5) "Person" means any individual, firm, corporation, partnership, or association;

(6) "Rendering plant" means any place of business or location where dead animals or any part or portion thereof, or packing house refuse, are processed for the purpose of obtaining the hide, skin, grease residue, or any other byproduct whatsoever;

(7) "Substation" means a properly equipped and authorized concentration site for the temporary storage of dead animals or packing house refuse pending final delivery to a licensed rendering plant;

(8) "Place of transfer" means an authorized reloading site for the direct transfer of dead animals or packing house refuse from the vehicle making original pickup to the line vehicle that will transport the dead animals or packing house refuse to a specified licensed rendering plant;

(9) "Independent collector" means any person who does not own a licensed rendering plant within the state of Washington but is properly equipped and licensed to transport dead animals or packing house refuse to a specified rendering plant. [1949 c 100 § 1; Rem. Supp. 1949 § 3142-1.]

**Severability—1949 c 100:** "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, nor any section, sentence, phrase, or word thereof not adjudged invalid or unconstitutional." [1949 c 100 § 20.] This applies to RCW 16.68.010-16.68.190.

**16.68.020 Duty to bury carcass of diseased animal—Dead animal presumed diseased.** Every person owning or having in charge any animal that has died or been killed on account of disease shall immediately bury the carcass thereof to such a depth that no part of the carcass shall be nearer than three feet from the surface of the ground. Any animal found dead shall be presumed to have died from and on account of disease. [1949 c 100 § 2; Rem. Supp. 1949 § 3142-2.]

**16.68.030 Sale, gift, or conveyance prohibited—Exceptions.** It is unlawful for any person to sell, offer for sale or give away a dead animal or convey the same along any public road or land not his own: *Provided*, That dead animals may be sold or given away to and legally transported on highways by a person having an unrevoked, annual license to operate a rendering plant or by a person having an unrevoked, annual license to

operate as an independent collector. [1949 c 100 § 3; Rem. Supp. 1949 § 3142-3.]

**16.68.040 License required of rendering plants and independent collectors.** It is unlawful for any person to operate a rendering plant or act as an independent collector without first obtaining a license from the director. [1949 c 100 § 4; Rem. Supp. 1949 § 3142-4.]

**16.68.050 Rendering plant license fee.** Any person engaged in operating a rendering plant shall secure from the director an annual rendering plant license and pay an annual fee of one hundred dollars: *Provided*, That no license shall be required to operate a rendering plant on the premises of a licensed slaughtering establishment maintaining state or federal meat inspection unless said rendering plant receives dead animals that have been transported on public highways. [1949 c 100 § 5; Rem. Supp. 1949 § 3142-5.]

**16.68.060 Independent collector license fee.** Any person engaged in the business of independent collector shall secure from the director an annual independent collector license and pay an annual fee of fifty dollars. [1949 c 100 § 6; Rem. Supp. 1949 § 3142-6.]

**16.68.070 Substation or places of transfer license fee.** Any rendering plant operator or independent collector that operates substations or places of transfer shall secure from the director an annual substation license or place of transfer license and pay an annual fee of twenty-five dollars for each substation or place of transfer. [1949 c 100 § 7; Rem. Supp. 1949 § 3142-7.]

**16.68.080 Expiration of license—Revocation.** Any license or permit issued under this chapter shall expire on the thirtieth day of June next subsequent to the date of issue, and may be sooner revoked by the director or his authorized representative for violations of this chapter. Any licensee or permittee under this chapter shall have the right to demand a hearing before the director before a revocation is made permanent. [1949 c 100 § 8; Rem. Supp. 1949 § 3142-8.]

**16.68.090 Applications for license.** Any person applying for a license to operate a rendering plant and/or substation and/or place of transfer, or to act as an independent collector shall make application on forms furnished by the director. Said application shall give all information required by the director and shall be accompanied by the required license fee. [1949 c 100 § 9; Rem. Supp. 1949 § 3142-9.]

**16.68.100 Procedure upon application—Inspection of premises.** If the director finds that the locations, buildings, substations equipment, vehicles, places of transfer, or proposed method of operation do not fully comply with the requirements of this chapter, he shall notify the applicant by registered letter wherein the same fails to comply. If the applicant whose plant or operation failed to comply notifies the director within ten days from the receipt of the registered letter that he will discontinue operations, the fee accompanying the

application will be returned to him; otherwise no part of the fee will be refunded. If the applicant whose plant failed to comply within a reasonable time, to be fixed by the director or his authorized representative, notifies the director that such defects are remedied, a second inspection shall be made. Not more than two inspections may be made on one application. [1949 c 100 § 10; Rem. Supp. 1949 § 3142-10.]

**16.68.110 Duty of licensees as to premises.** Every licensee under this chapter must comply with the following:

(1) All floors shall be constructed of concrete or other impervious material, shall be kept reasonably clean and in good repair. Floors shall slope at least one-fourth inch to the foot toward drains, and slope at least three-eighths inch to the foot as the drains are approached.

(2) Adequate sanitary drainage must be provided leading to approved grease traps and approved sewage disposal system. No point on the floor shall be over sixteen feet from a drain.

(3) Suitable disposal of paunch contents must be provided in accordance with sanitary regulations.

(4) Walls shall be of impervious material to a height not less than six feet from the floor with a tight union with the floor.

(5) Potable water supply shall be provided for human consumption, washing and cleaning.

(6) Ample steam shall be provided for cleaning purposes.

(7) Approved toilet and dressing room facilities must be provided for employees.

(8) The building must be kept free from flies, rats, mice, and cockroaches.

(9) Premises must be kept neat and orderly and all buildings must be attractive in appearance.

(10) All rendering plants, substations, and places of transfer shall be so located, arranged, constructed and maintained, and the operation so conducted at all times as to be consistent with public health and safety.

(11) Suitable facilities for the dipping, washing and disinfecting of hides obtained from animals that died or were killed on account of an infectious or contagious disease, shall be provided.

(12) Two copies of building or remodeling plans shall be forwarded to the director for his approval before such building or remodeling is begun. [1949 c 100 § 12; Rem. Supp. 1949 § 3142-12.]

**16.68.120 Duty of licensees—Standards.** Every licensee under this chapter shall comply with the following:

(1) Dead animals shall be placed in containers or vehicles which are constructed of or lined with impervious material, and which do not permit the escape of any liquid, and which are covered in such a way that the contents shall not be openly exposed to insects.

(2) All vehicles and containers used for transporting dead animals shall be properly cleaned and disinfected before leaving the premises of a rendering plant, substation or place of transfer.

(3) After original loading, dead animals shall not be moved from the transporting container or vehicle upon a public highway or in any other place, except at a licensed rendering plant, licensed substation, or licensed place of transfer.

(4) No containers and vehicles used for transporting dead animals shall be used for the transporting of live animals except to a licensed rendering plant.

(5) All vehicles used to haul dead animals that have died of an infectious or contagious disease, shall proceed directly to the unloading point and shall not enter other premises until the vehicle has been properly cleaned and disinfected.

(6) The name of the rendering plant or independent collector shall be painted in letters at least four inches high on each side of every truck used for transporting dead animals.

(7) The skinning and dismembering of dead animals shall be done in the building where they are processed.

(8) Cooking vats or tanks shall be airtight except for proper escape for steam or vapor.

(9) Steam or vapor from cooking vats or tanks shall be so disposed of as not to be detrimental to public health or safety.

(10) Dead animals shall be processed within forty-eight hours after delivery to the rendering plant.

(11) No carcasses, parts thereof, or packing house refuse under process for marketing shall be permitted to come in contact with any part of the building or the equipment used in connection with the unloading, skinning, dismembering and grinding of carcasses or refuse as originally received at disposal plant. [1949 c 100 § 13; Rem. Supp. 1949 § 3142-13.]

**16.68.130 Right of access to premises and records.** The director or his authorized agent, shall have free and uninterrupted access to all parts of premises that come under the provisions of this chapter, for the purpose of making inspections and the examination of records. [1949 c 100 § 14; Rem. Supp. 1949 § 3142-14.]

**16.68.140 Unlawful possession of horse meat—Exceptions.** It shall be unlawful for any person to transport, to sell, offer to sell, or have on his premises horse meat for other than human consumption unless said horse meat is decharacterized in a manner prescribed by the director: *Provided*, That this provision shall not apply to carcasses slaughtered by a farmer for consumption on his own ranch or to carcasses in the possession of a person licensed under this chapter, or to canned horse meat meeting United States bureau of animal industry regulations. [1949 c 100 § 15; Rem. Supp. 1949 § 3142-18.]

**16.68.150 Feeding of carcasses to swine unlawful—Exception.** It shall be unlawful to feed carcasses of animals, or any part or portion thereof, to swine, unless said carcasses or portions thereof are cooked in a manner prescribed by the director. [1949 c 100 § 16; Rem. Supp. 1949 § 3142-20.]

*Swine, garbage feeding: RCW 16.36.103-16.36.110.*

**16.68.160 Disposition of fees.** Funds collected for license fees and inspection fees shall be retained by the director to be used for the enforcement of this chapter. [1949 c 100 § 11; Rem. Supp. 1949 § 3142-11.]

**16.68.170 Rules and regulations.** The director is authorized and shall make and enforce such regulations as may be necessary to effectuate the provisions of this chapter. Such regulations shall be consistent with the provisions of this chapter. [1949 c 100 § 17; Rem. Supp. 1949 § 3142-21.]

**16.68.180 Penalty for violations.** The violation of any provision of this chapter shall be a misdemeanor. [1949 c 100 § 18; Rem. Supp. 1949 § 3142-22.]

**16.68.190 Exception as to use for bait for trapping purposes.** Nothing in this chapter shall prohibit the state game department from using the carcasses of dead animals for trap bait in their regular trapping operations. [1949 c 100 § 18A; Rem. Supp. 1949 § 3142-23.]

**Chapter 16.70**

**CONTROL OF PET ANIMALS INFECTED WITH DISEASES COMMUNICABLE TO HUMANS**

Sections

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| 16.70.010 | Purpose.  |
| 16.70.020 | Definitions.  |
| 16.70.030 | Emergency action authorized—Scope—Animals as public nuisance. |
| 16.70.040 | Rules and regulations—Scope.                                  |
| 16.70.050 | Violations—Penalty.   |
| 16.70.060 | Concurrent powers—Cooperation between officials.              |

**16.70.010 Purpose.** The incidence of disease communicated to human beings by contact with pet animals has shown an increase in the past few years. The danger to human beings from such pets infected with disease communicable to humans has demonstrated the necessity for legislation to authorize the secretary of the department of social and health services and the state board of health to take such action as is necessary to control the sale, importation, movement, transfer, or possession of such animals where it becomes necessary in order to protect the public health and welfare. [1971 c 72 § 1.]

**16.70.020 Definitions.** The following words or phrases as used in this chapter shall have the following meanings unless the context indicates otherwise:

(1) "Pet animals" means dogs (Canidae), cats (Felidae), monkeys and other similar primates, turtles, psittacine birds, skunks, or any other species of wild or domestic animals sold or retained for the purpose of being kept as a household pet.

(2) "Secretary" means the secretary of the department of social and health services or his designee.

(3) "Department" means the department of social and health services.

(4) "Board" means the Washington state board of health.

(5) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.



(6) "Quarantine" means the placing and restraining of any pet animal or animals by direction of the secretary, either within a certain described and designated enclosure or area within this state, or the restraining of any such pet animal or animals from entering this state. [1971 c 72 § 2.]

**16.70.030 Emergency action authorized—Scope—Animals as public nuisance.** In the event of an emergency arising out of an outbreak of communicable disease caused by exposure to or contact with pet animals, the secretary is hereby authorized to take any reasonable action deemed necessary by him to protect the public health, including but not limited to the use of quarantine or the institution of any legal action authorized pursuant to Title 7 RCW and RCW 43.20.150 through 43.20.170.

The secretary shall have authority to destroy any pet animal or animals which may reasonably be suspected of having a communicable disease dangerous to humans and such animal or animals are hereby declared to be a public nuisance. [1971 c 72 § 3.]

**16.70.040 Rules and regulations—Scope.** The secretary, with the advice and concurrence of the director of the department of agriculture, shall be authorized to develop rules and regulations for proposed adoption by the board relating to the importation, movement, sale, transfer, or possession of pet animals as defined herein which are reasonably necessary for the protection and welfare of the people of this state. [1971 c 72 § 4.]

**16.70.050 Violations—Penalty.** Any person violating or refusing or neglecting to obey the order or directive issued by the secretary pursuant to the authority granted under this action [act] or the rules and regulations promulgated by the board hereunder shall be guilty of a misdemeanor. [1971 c 72 § 5.]

**16.70.060 Concurrent powers—Cooperation between officials.** The powers conferred on the secretary by this chapter shall be concurrent with the powers conferred on the director of the department of agriculture by chapter 16.36 RCW, and chapter 43.23 RCW, and the secretary and director shall cooperate in exercising their responsibilities in these areas. [1971 c 72 § 6.]

### Chapter 16.72 FUR FARMING

#### Sections

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| 16.72.010 | Definitions.                           |
| 16.72.020 | Quarantine controls.                   |
| 16.72.030 | Fox, mink, marten declared personalty. |
| 16.72.040 | Branding—Recording.                    |
| 16.72.050 | Registration required.                 |

**16.72.010 Definitions.** As used in this chapter:  
"Director" means director of agriculture.  
"Department" means department of agriculture.

"Person" includes any individual, firm corporation, trust, association, copartnership, society, or other organization of individuals and any other business unit, device or arrangement.

"Fur farming" means breeding, raising and rearing of mink, marten, fox and chinchilla in captivity or enclosures. [1955 c 321 § 2.]

**16.72.020 Quarantine controls.** Fur farming shall be deemed an agricultural pursuit and the director is hereby authorized to exercise quarantine controls over such farms in accordance with the provisions of this title. Facilities available to the department may be used by the director in carrying out the provisions of this chapter. [1955 c 321 § 3.]

**16.72.030 Fox, mink, marten declared personalty.** All fox, mink and marten that have been lawfully imported or acquired, or bred or reared in captivity or enclosures, are declared to be personal property. Any person hereafter acquiring any such fur bearing animals in the wild state, shall within ten days furnish satisfactory proof to the director that such animals were lawfully obtained. Such wild animals shall not become personal property under the provisions of this section until such proof is furnished. [1955 c 321 § 4.]

**16.72.040 Branding—Recording.** The owners of any fox, mink, or marten may mark them by branding with tattoo or other marks for the purpose of identification, but no person shall be entitled to ownership in or rights under any particular branding marks unless and until the branding marks are recorded with the department in the same manner and with like effect as brands of other animals are recorded as provided in chapter 16.56 RCW. [1955 c 321 § 5.]

**16.72.050 Registration required.** Each person engaged in fur farming in this state shall register with the department on a form to be provided giving the location of the fur farm, name, and address of the owner and such other information and at such times as the department may by regulation require. [1955 c 321 § 6.]

### Chapter 16.74 WASHINGTON WHOLESOME POULTRY PRODUCTS ACT

#### Sections

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16.74.910 Severability—1969 ex.s. c 146.  
 16.74.920 Chapter cumulative and nonexclusive.

*Poultry and poultry products—Label requirements: RCW 69.04-333-69.04.335.*

**16.74.010 Short title.** This chapter shall be known and designated as the "Washington wholesome poultry products act". [1969 ex.s. c 146 § 1.]

**16.74.020 Purposes of chapter.** The purposes of this chapter are to adopt new legislation governing poultry and poultry products and to promote uniformity of state legislation with the federal poultry products inspection act. Poultry and poultry products are an important source of the state's total supply of food. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that poultry and poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Poultry and poultry products not reaching these standards are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry and poultry products, and result in sundry losses to poultry producers and processors of poultry and poultry products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that all articles and poultry which are regulated under this chapter substantially affect the public and that regulation by the director as contemplated by this chapter is appropriate to protect the health and welfare of consumers. [1969 ex.s. c 146 § 2.]

**16.74.030 Definitions govern construction.** The definitions in RCW 16.74.040 through 16.74.280, unless the context otherwise requires, shall govern the construction of this chapter. [1969 ex.s. c 146 § 3.]

**16.74.040 "Department".** "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 146 § 4.]

**16.74.050 "Director".** "Director" means the director of the department of agriculture or his authorized representative. [1969 ex.s. c 146 § 5.]

**16.74.060 "Person".** "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors. [1969 ex.s. c 146 § 6.]

**16.74.070 "Poultry".** "Poultry" includes but is not limited to chickens, turkeys, ducks, geese, or any other bird used for human consumption whether live or slaughtered. [1969 ex.s. c 146 § 7.]

**16.74.080 "Poultry products".** "Poultry products" means any poultry carcass, or part thereof; or any product which is made wholly or in part from any poultry carcass, or part thereof, excepting poultry products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry and which are exempted by the director from definition as a poultry product under such conditions as the director may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products. [1969 ex.s. c 146 § 8.]

**16.74.090 "Adulterated".** "Adulterated" shall apply to any poultry product under one or more of the following circumstances:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2) If it bears or contains (by reason of administration of any substance to the live poultry or otherwise) and is an added poisonous or added deleterious substance (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; (b) a food additive; or (c) a color additive) which may, in the judgment of the director make such article unfit for human food;

(3) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392 as it is now or hereafter amended;

(4) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394 as it is now or hereafter amended;

(5) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396 as it is now or hereafter amended: *Provided*, That an article which is not otherwise deemed adulterated under subsections (2), (3), or (4) of this section, shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the director in official establishments;

(6) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(7) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(8) If it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter;

(9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(10) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(11) If any valuable constituent has been in whole or in part omitted or abstracted therefrom, or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [1969 ex.s. c 146 § 9.]

**16.74.100 "Misbranded".** "Misbranded" shall apply to any poultry product under one or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) If in a package or other container unless it bears a label showing (a) the name and the place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count: *Provided*, That under part (b) of this subsection (5), reasonable variations may be permitted, and exemptions as to small packages or articles not in packages or other containers may be established by regulations prescribed by the director;

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the director under RCW 16.74.350 unless (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the director under RCW 16.74.350, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) If it is not subject to the provisions of subsection (7) of this section, unless its label bears (a) the common or usual name of the food, if there be any, and (b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the director, be designated as spices, flavorings, and colorings without naming each: *Provided*, That to the extent that compliance with the requirements of part (b) of this subsection (9) is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director;

(10) If it purports to be or is represented for special dietary uses unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the director determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided*, That, to the extent that compliance with the requirements of this subsection (11) is impracticable, exemptions shall be established by regulations promulgated by the director; or

(12) If it fails to bear on its containers, and in the case of nonconsumer packaged carcasses directly thereon, as the director may by regulations prescribe, the official inspection legend and official establishment number of the establishment where the article was processed, and, unrestricted by any of the foregoing, such other information as the director may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. [1969 ex.s. c 146 § 10.]

**16.74.110 "Inspector"**. "Inspector" means an employee or official of the department authorized by the director to inspect poultry and poultry products under the authority of this chapter. [1969 ex.s. c 146 § 11.]

**16.74.120 "Official mark"**. "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article or poultry under this chapter. [1969 ex.s. c 146 § 12.]

**16.74.130 "Official inspection legend"**. "Official inspection legend" means any symbol prescribed by regulations of the director showing that an article was inspected and passed in accordance with this chapter. [1969 ex.s. c 146 § 13.]

**16.74.140 "Official certificate"**. "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter. [1969 ex.s. c 146 § 14.]

**16.74.150 "Official device"**. "Official device" means any device prescribed or authorized by the director for use in applying any official mark. [1969 ex.s. c 146 § 15.]

**16.74.160 "Official establishment"**. "Official establishment" means any establishment licensed by the department at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this chapter. [1969 ex.s. c 146 § 16.]

**16.74.170 "Inspection service"**. "Inspection service" means the animal industry division of the department having the responsibility for carrying out the provisions of this chapter. [1969 ex.s. c 146 § 17.]

**16.74.180 "Container", "package"**. "Container" or "package" means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover. [1969 ex.s. c 146 § 18.]

**16.74.190 "Label", "labeling"**. "Label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article; and the term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1969 ex.s. c 146 § 19.]

**16.74.200 "Shipping container"**. "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container. [1969 ex.s. c 146 § 20.]

**16.74.210 "Immediate container"**. "Immediate container" means any consumer package, or any other container in which poultry products, not consumer packaged, are packed. [1969 ex.s. c 146 § 21.]

**16.74.220 "Capable of use as human food"**. "Capable of use as human food" means any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the director to deter its use as human food, or it is naturally inedible by humans. [1969 ex.s. c 146 § 22.]

**16.74.230 "Processed"**. "Processed" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed. [1969 ex.s. c 146 § 23.]

**16.74.240 "Uniform Washington food, drug and cosmetic act"**. "Uniform Washington food, drug and cosmetic act" means the act so entitled, as now or hereafter amended. [1969 ex.s. c 146 § 24.]

*Uniform Washington food, drug and cosmetic act: Chapter 69.04 RCW.*

**16.74.250 "Pesticide chemical", "food additive", "color additive", "raw agricultural commodity"**. "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the uniform Washington food, drug and cosmetic act as now or hereafter amended. [1969 ex.s. c 146 § 25.]

**16.74.260 "Poultry products broker".** "Poultry products broker" means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person. [1969 ex.s. c 146 § 26.]

**16.74.270 "Renderer".** "Renderer" means any person engaged in the business of rendering carcasses, or parts or products of the carcasses, of poultry, except rendering conducted under inspection or exemption under this chapter. [1969 ex.s. c 146 § 27.]

**16.74.280 "Animal food manufacturer".** "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry. [1969 ex.s. c 146 § 28.]

**16.74.290 "Intrastate commerce".** "Intrastate commerce" means any article in intrastate commerce whether such article is alive or processed and is intended for sale, held for sale, offered for sale, sold, stored, transported or handled in this state in any manner and prepared for eventual distribution to consumers in this state whether at wholesale or retail. [1969 ex.s. c 146 § 64.]

**16.74.300 Preslaughter inspection.** In order to protect the public health by preventing the processing and distribution of unwholesome or adulterated poultry products in this state, the director shall when he deems it necessary cause to be made by inspectors preslaughter inspection of poultry in each official establishment processing poultry or poultry products. [1969 ex.s. c 146 § 29.]

**16.74.310 Post mortem inspection.** The director, whenever processing operations are being conducted, shall cause to be made by inspectors post mortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as a human food in each official establishment processing such poultry or poultry products. [1969 ex.s. c 146 § 30.]

**16.74.320 Condemnation of adulterated carcasses and products—Appeal.** All poultry carcasses and parts thereof and other poultry products found to be adulterated shall be condemned and shall if no appeal be taken from such determination of condemnation be destroyed for human food purposes under the supervision of an inspector: *Provided*, That carcasses, parts and products which by processing may be made not adulterated, need not be so condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the carcasses, parts, or products shall be appropriately marked and segregated

pending completion of an appeal inspection, which appeal cost shall be at the cost of the appellant if the director determines the appeal is frivolous. If the determination of the condemnation is sustained the carcasses, parts and products shall be destroyed for human food purposes under the supervision of an inspector. [1969 ex.s. c 146 § 31.]

**16.74.330 Sanitary practices.** Each official establishment slaughtering poultry or processing poultry products subject to the provisions of this chapter shall have such premises, facilities and equipment, and be operated in accordance with such sanitary practices, as are required by regulations promulgated by the director for the purpose of preventing the processing, distribution or sale of poultry products which are adulterated. [1969 ex.s. c 146 § 32.]

**16.74.340 Information to be on containers after inspection.** All poultry products inspected at any official establishment under the authority of this chapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, on their shipping containers and immediate containers, and in the case of nonconsumer packaged carcasses directly thereon, as the director may require, the information required under RCW 16.74.100. [1969 ex.s. c 146 § 33.]

**16.74.350 Director may prescribe labeling, standards of identity and standards of fill requirements.** The director whenever he determines such action is necessary for the protection of the public, may prescribe: (1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marketing and labeling any articles or poultry subject to this chapter; (2) definitions and standards of identity or composition of articles subject to this chapter and standards of fill of container for such articles not inconsistent with any such standards established under the uniform Washington food, drug and cosmetic act. [1969 ex.s. c 146 § 34.]

**16.74.360 False, misleading markings prohibited.** No article subject to this chapter shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers, which are not false or misleading and which are approved by the director, are permitted. [1969 ex.s. c 146 § 35.]

**16.74.370 Director may withhold use of marking or labeling—Hearing—Appeal.** If the director has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this chapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person

using or proposing to use the marking, labeling, or container does not accept the determination of the director, such person may request a hearing, as provided for contested cases under chapter 34.04 RCW, as now or hereafter amended, but the use of the marking, labeling, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business or to the superior court for Thurston county. [1969 ex.s. c 146 § 36.]

**16.74.380 Prohibited practices.** No person shall:

(1) Slaughter any poultry or process any poultry products which are capable of use as human food at any establishment processing any such articles for intrastate commerce, except in compliance with the requirements of this chapter;

(2) Sell, knowingly transport, offer for sale or knowingly offer for transportation, or knowingly receive for transportation, in this state (a) any poultry products which are capable of use as human food and which are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (b) any poultry products required to be inspected under this chapter unless they have been so inspected and passed;

(3) Do, with respect to any poultry products which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such products to be adulterated or misbranded;

(4) Sell, knowingly transport, offer for sale or transportation, knowingly receive for transportation, in this state or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head or viscera have not been removed in accordance with regulations promulgated by the director, except as may be authorized by regulations of the director.

(5) Use to his own advantage, or reveal other than to the authorized representatives of this state, United States government or any other state in their official capacity, or as ordered by a court in any judicial proceedings, any information acquired under the authority of this chapter concerning any matter which is entitled to protection as a trade secret. [1969 ex.s. c 146 § 37.]

**16.74.390 Reproducing official mark or certificate prohibited.** No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director. [1969 ex.s. c 146 § 38.]

**16.74.400 Unlawful acts as to official mark, device or certificate.** No person shall:

(1) Forge any official device, mark, or certificate;

(2) Without authorization from the director use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director; or

(6) Represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has, respectively, not been so inspected and passed, or exempted. [1969 ex.s. c 146 § 39.]

**16.74.410 Facilities, inventory, records to be open to inspection and sampling.** The following classes of persons shall, for such period of time as the director may by regulations prescribe, not to exceed two years unless otherwise directed by the director for good cause shown, keep such records as are properly necessary for the effective enforcement of this chapter in order to insure against adulterated or misbranded poultry products for the Washington consumer; and all persons subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the director, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any person who engages in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any poultry, for intrastate commerce, for use as human food or animal food;

(2) Any person who engages in the business of buying or selling (as poultry products brokers, wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for intrastate commerce, or importing, any carcasses, or parts or products of carcasses, of any poultry;

(3) Any person who engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in intrastate commerce, or importing, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter. [1969 ex.s. c 146 § 41.]

**16.74.420 Registration of poultry products brokers, renderers, animal food manufacturers, wholesalers and warehousemen.** No person shall engage in business or intrastate commerce, as a poultry products broker, renderer or animal food manufacturer, or engage in business in intrastate commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any poultry, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for intrastate commerce, or engage in the business of buying, selling, or transporting in intrastate commerce, or importing, any dead, dying, disabled, or diseased poultry, or parts of the carcasses of any poultry that died otherwise than by slaughter, unless, when required by regulations of the director, he has registered with the director his name, and the address of each place of business at which, and all trade names under which, he conducts such business. [1969 ex.s. c 146 § 42.]

**16.74.430 Poultry products not for use as human food—Restrictions—Identification.** Inspection shall not be provided under this chapter at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in this state, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, knowingly transport, or offer for sale or knowingly offer for transportation, or knowingly receive for transportation, in this state, or import, any poultry carcasses or parts or products thereof which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the director or are naturally inedible by humans. [1969 ex.s. c 146 § 40.]

**16.74.440 Poultry products not for use as human food—Transactions, transportation and importation regulations.** No person engaged in the business of buying, selling, or transporting in intrastate commerce, or importing, dead, dying, disabled, or diseased poultry, or any parts of the carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, or import, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter, unless such transaction, transportation or importation is made in accordance with such regulations as the director may prescribe to assure that such poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food. [1969 ex.s. c 146 § 43.]

**16.74.450 Regulations for storage and handling of poultry products—Penalty for violation.** (1) The director may by regulations prescribe conditions under which poultry products capable of use as human food,

shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, or transporting, in or for commerce, or importing, such articles, whenever the director deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is an infraction punishable under RCW 16.74.650.

(2) Before any criminal proceedings are filed against a person for a violation of this chapter, such person shall be given reasonable notice of the alleged violation and an opportunity to present his views orally or in writing in regard to such contemplated action. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violators of this chapter, whenever he believes that the public interest will be adequately served and compliance with the chapter obtained by a suitable written notice. [1969 ex.s. c 146 § 44.]

**16.74.460 Designation of time for inspection of slaughter and processing of poultry.** Whenever the director shall deem it necessary in order to furnish proper, efficient and economical inspection of two or more establishments and the proper inspection of poultry or poultry products, the director, after a hearing on written notice to the licensee of each such establishment affected, may designate days and hours for the slaughter of poultry and the preparation or processing of poultry products at such establishments. The director in making such designation of days and hours shall give consideration to the existing practices at the affected establishment fixing the time for slaughter of poultry and the preparation or processing of poultry products thereof. [1969 ex.s. c 146 § 45.]

**16.74.470 Disposition of adulterated or misbranded poultry or poultry products away from preparing establishment—Public nuisance.** The director, whenever he finds any poultry or poultry products subject to the provisions of this chapter away from the establishment where such poultry or poultry products were prepared or anywhere in intrastate commerce that are adulterated or misbranded, shall render such poultry or poultry products unsalable or shall order the destruction of such poultry or poultry products which are hereby declared to be a public nuisance. [1969 ex.s. c 146 § 46.]

**16.74.480 Embargo on adulterated or misbranded poultry or products—When** The director may, when he finds, or has probable cause to believe that any poultry or poultry product subject to the provisions of this chapter which has been or may be introduced into intrastate commerce and such poultry or poultry products are so adulterated or misbranded that their embargo is necessary to protect the public from injury, affix on such poultry or poultry products a notice of their embargo prohibiting their sale or movement in intrastate commerce without a release from the director. The director shall subsequent to embargo, if he finds



that such poultry or poultry products are not adulterated or misbranded so as to be in violation of this chapter, remove such embargo forthwith. [1969 ex.s. c 146 § 47.]

**16.74.490 Embargo on adulterated or misbranded poultry or products—Petition to superior court—Hearing—Order—Costs.** When the director has embargoed any poultry or poultry products, he shall petition the superior court of the county in which the poultry or poultry product is located without delay and within twenty days for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and, after a prompt hearing to any claimant of poultry or poultry products, shall issue an order which directs the removal of such embargo or the destruction or the correction and release of such poultry or poultry products. An order for destruction or correction and release shall contain such provisions for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond, as the court finds indicated in the circumstance. [1969 ex.s. c 146 § 48.]

**16.74.500 Embargo on adulterated or misbranded poultry or products—Owner may agree to disposition of products without petition to court.** The director need not petition the superior court as provided for in RCW 16.74.490, if the owner or the claimant of such poultry or poultry products agrees in writing to the disposition of such poultry or poultry products as the director may order. [1969 ex.s. c 146 § 49.]

**16.74.510 Embargo on adulterated or misbranded poultry or products—Consolidation of petitions.** Two or more petitions under RCW 16.74.490, which pend at the same time and which present the same issue and claimant hereunder, may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1969 ex.s. c 146 § 50.]

**16.74.520 Embargo on adulterated or misbranded poultry or products—Claimant entitled to representative sample.** The claimant in any proceeding by petition under RCW 16.74.490 shall be entitled to receive a representative sample of the article subject to such proceedings, upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1969 ex.s. c 146 § 51.]

**16.74.530 Embargo on adulterated or misbranded poultry or products—Damages from administrative action.** No state court shall allow the recovery of damages from administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1969 ex.s. c 146 § 52.]

**16.74.540 Annual license—Fee—Contents of application.** It shall be unlawful for any person to operate a poultry slaughtering or processing establishment without first having obtained an annual license from the department, which shall expire on the 31st day of March following issuance. A separate license shall be required for each such establishment. Application for a license shall be on a form prescribed by the director and accompanied by a twenty-five dollar annual license fee. Such application shall include the full name of the applicant for the license and the location of the poultry slaughtering or processing establishment he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. [1969 ex.s. c 146 § 53.]

**16.74.550 Penalty for late renewal.** If the application for renewal of any license provided for under this chapter is not filed prior to April 1st in any year, an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he has not operated a poultry slaughtering or processing establishment subsequent to the expiration of his license. [1969 ex.s. c 146 § 54.]

**16.74.560 Denial, suspension, revocation of license—Grounds.** The director may, subsequent to a hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter. [1969 ex.s. c 146 § 55.]

**16.74.570 Exemptions.** (1) The director shall, by regulation and under such conditions as to sanitary standards, practices, and procedures as he may prescribe, exempt from specific provisions of this chapter—

(a) retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up and/or packaging of poultry products on the premises where such sales to consumers are made;

(b) for such period of time as the director determines that it would be impracticable to provide inspection and the exemption will aid in the effective administration of this chapter, any person engaged in the processing of poultry or poultry products for intrastate commerce and the poultry or poultry products processed by such person: *Provided*, That no such exemption shall continue in effect on and after February 18, 1970; and

(c) persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws, to the extent that the director determines necessary to avoid conflict with such requirements while still effectuating the purposes of this chapter.

(2) (a) The director shall, by regulation and under such conditions, including sanitary standards, practices, and procedures, as he may prescribe, exempt from specific provisions of this chapter—

(i) the slaughtering by any person of poultry of his own raising, and the processing by him and transportation of the poultry products exclusively for use by him and members of his household and his nonpaying guests and employees; and

(ii) the custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation of the poultry products exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees: *Provided*, That the director may promulgate such rules and regulations as are necessary to prevent the commingling of inspected and uninspected poultry and poultry products.

(b) In addition to the specific exemptions provided herein, the director shall, when he determines that the protection of consumers from adulterated or misbranded poultry products will not be impaired by such action, provide by regulation, consistent with paragraph (c), for the exemption of the operations of poultry producers not exempted under paragraph (a), which are engaged in slaughtering and/or cutting up poultry for distribution as carcasses or parts thereof, from such provisions of this chapter as he deems appropriate, while still protecting the public from adulterated or misbranded products, under such conditions, including sanitary requirements, as he shall prescribe to effectuate the purposes of this chapter.

(c) The provisions of this chapter shall not apply to poultry producers with respect to poultry of their own raising on their own farms if—

(i) such producers slaughter not more than two hundred fifty turkeys, or not more than an equivalent number of birds of all species during the calendar year for which this exemption is being determined (four birds of other species being deemed the equivalent of one turkey);

(ii) such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms.

(3) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection under this section, except as otherwise specified under subsections (1) and (2).

(4) The director may by order suspend or terminate any exemption under this section with respect to any person whenever he finds that such action will aid in effectuating the purposes of this chapter. [1969 ex.s. c 146 § 65.]

**16.74.580 Exceptions to exemption provisions—Licensing and inspection by city or county, when.** The exemptions set forth in RCW 16.74.570 shall not include an exemption from the licensing provisions set forth in RCW 16.74.540 for persons slaughtering or processing poultry except as to retail dealers conforming to the provisions of RCW 16.74.570(1)(a) and producers conforming to the provisions of RCW 16.74.570(2)(c): *Provided*, That any city or county may, when its inspection service is equivalent to that required under the provisions of this chapter as determined by the director and the comparable federal agency administering the federal poultry inspection act, license and inspect any retail dealer's place of business subject to the provisions of this chapter when such retail dealer's place of business is situated within the jurisdiction of such city or county and such retail dealer sells at least fifty percent of the poultry and poultry products at each such place of business to the ultimate consumer. [1969 ex.s. c 146 § 66.]

**16.74.590 Rules, regulations and hearings subject to administrative procedure act.** The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.04 RCW, the Administrative Procedure Act, as now or hereafter amended. [1969 ex.s. c 146 § 56.]

**16.74.600 Intergovernmental cooperation.** The director may in order to carry out the purpose of this chapter enter into agreements with any federal, state or other governmental unit for joint inspection programs or for the receipt of moneys from such federal, state or other governmental units in carrying out the purpose of this chapter. [1969 ex.s. c 146 § 57.]

**16.74.610 Regulations promulgated under federal poultry products inspection act adopted—Exception.** The regulations which have been promulgated under the provisions of the federal poultry products inspection act, 21 USC 451 et seq., and in effect on August 9, 1971, and not in conflict with the provisions of this chapter are adopted as regulations applicable under the provisions of this chapter. [1971 ex.s. c 108 § 4; 1969 ex.s. c 146 § 58.]

**16.74.615 Uniformity of state and federal acts and regulations as purpose—Procedure.** The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal poultry products inspection act, 21 USC 451 et seq., and regulations adopted thereunder. In accord with such purpose any regulation adopted under the federal poultry products inspection act and published in the federal register shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.04 RCW as enacted or hereafter amended. The director shall, however, within thirty days of the publication of the adoption of any such regulation under the federal poultry products inspection act give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.04 RCW as enacted or hereafter amended. [1971 ex.s. c 108 § 5.]

**16.74.620 Disposition of moneys.** All moneys received by the department under the provisions of this chapter shall be paid into the state treasury. [1969 ex.s. c 146 § 59.]

**16.74.630 Prior liability preserved.** The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on August 11, 1969. [1969 ex.s. c 146 § 60.]

**16.74.640 Authority of city or county to license and inspect poultry products distributors' and retailers' facilities.** This chapter shall in no manner be construed to deny or limit the authority of a city or county to license and carry on the necessary inspection of poultry or poultry products, distribution facilities and equipment of retail poultry and poultry product distributors selling, offering for sale, holding for sale, or trading, delivering or bartering poultry or poultry products within their jurisdiction and/or prohibit the sale of poultry or poultry products within their jurisdiction when such poultry or poultry products are adulterated or distributed under unsanitary conditions. [1969 ex.s. c 146 § 67.]

**16.74.650 Penalty.** Any person violating any provisions of this chapter or any rules or regulations adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 ex.s. c 146 § 61.]

**16.74.900 Portions of chapter conflicting with federal requirements—Construction.** If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the department, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the department, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the department. [1969 ex.s. c 146 § 68.]

**16.74.910 Severability—1969 ex.s. c 146.** If any provision of this chapter, or its application to any person or circumstances is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1969 ex.s. c 146 § 63.]

**16.74.920 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1969 ex.s. c 146 § 62.]



# TITLE 17

## WEEDS, RODENTS AND PESTS

### Chapters

- 17.04 Weed districts.
- 17.06 Intercounty weed districts.
- 17.08 Weed extermination areas.
- 17.10 Noxious weeds—Control boards.
- 17.12 Agricultural pest districts.
- 17.16 Rodents.
- 17.21 Washington pesticide application act.
- 17.24 Insect pests and plant diseases.
- 17.28 Mosquito control districts.
- 17.34 Pest control compact.

*Control of predatory birds injurious to agriculture: RCW 15.04.110-15.04.120.*

*Director of agriculture: Chapter 43.23 RCW.*

*Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.*

*Lien for furnishing fertilizers, pesticides, weed killers: Chapter 60.22 RCW.*

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### Chapter 17.04 WEED DISTRICTS

#### Sections

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*Agricultural and vegetable seeds: Chapter 15.49 RCW.*

**17.04.010 Districts authorized—Area and boundaries.** The boards of county commissioners of the respective counties may create a weed district or districts within their counties and enlarge any district, or reduce any district or create or combine or consolidate the districts, or divide or create new districts, from time to time, in the manner hereinafter provided, for the purpose of destroying, preventing and exterminating, or to prevent the introduction, propagation, cultivation or increase of, any particular weed, weeds or plants, or all weeds or plants, including Scotch broom, which are now or may hereafter be classed by the agricultural experiment station of Washington State University as noxious weeds, or plants detrimental to or destructive of crops, fruit, trees, shrubs, valuable plants, forage, or other agricultural plants or produce. Any such district shall include not less than one section of land, and the boundaries thereof shall be along an established road, railroad, scab, uncleared or grazing land, or property line, or established lines, or some natural boundary, and shall include only cultivated or farming lands and shall not include any scab, uncleared or grazing land, except such as shall lie wholly within cultivated or farming lands within the districts, or which lie adjacent to such cultivated or farming lands and which are infested, or which may reasonably be expected to become infested, with the particular weed or weeds to be destroyed, prevented and exterminated by such district: *Provided*, That any quarter section of land, or lesser legal subdivision in single ownership, fifty percent of which is cultivated or farming land, shall be considered cultivated and farming land within the meaning of this chapter. [1961 c 250 § 1; 1937 c 193 § 1; 1929 c 125 § 1; RRS § 2771. Prior: 1921 c 150 § 1. Formerly RCW 17.04.010 and 17.04.020.]

**17.04.030 Petition—Time, place and notice of hearing.** Any one or more freeholders owning more than fifty percent of the acreage desired to be included within the proposed weed district may file a petition with the board of county commissioners praying that their land be included, either separately or with other lands included in the petition, in a weed district to be formed for the purpose of destroying, preventing or exterminating any one or all such weeds, or that such lands be included within a district already formed, or a new district or districts to be formed out of any district or districts then existing. Such petition shall state the boundaries of the proposed district, the approximate

number of acres in the proposed district, the particular weed or weeds to be destroyed, prevented or exterminated, the general method or means to be used in such work, and shall contain a list of all known land owners within the proposed district, together with the addresses of such land owners. Upon the filing of such petition the board of county commissioners shall fix a time for a hearing thereon, and shall give at least thirty days' notice of the time and place of such hearing by posting copies of such notice in three conspicuous places within the proposed district, one copy of which shall be at the main entrance to the court house, and by mailing a copy of such notice to each of the land owners named in the petition at the address therein named, and if any of the land described in the petition be owned by the state, a copy thereof shall be mailed to the state land commissioner at Olympia. [1929 c 125 § 2; RRS § 2772. Prior: 1921 c 150 § 2. Formerly RCW 17.04.030 and 17.04.040.]

**17.04.050 Board to determine petition—Resolution to create district.** At the time and place fixed for such hearing the board of county commissioners shall determine whether such weed district shall be created and if such board determines that such district shall be created, it shall fix the boundaries thereof, but shall not modify the purposes of the petition with respect to the weed or weeds to be destroyed, prevented and exterminated as set forth in this petition, and shall not enlarge the boundaries of the proposed district, or enlarge or change the boundary or boundaries of any district or districts already formed without first giving notice to all land owners interested as provided in RCW 17.04.030. If the board shall determine that the weed district petitioned for shall be created it shall pass a resolution to that effect and shall assign a number to such weed district which shall be the lowest number not already taken or adopted by a weed district in such county, and thereafter such district shall be known as "Weed District No. \_\_\_\_\_ of \_\_\_\_\_ County," inserting in the first blank the number of the district and in the second the name of the county in which the district is organized. [1929 c 125 § 3; RRS §§ 2773, 2774. Prior: 1921 c 150 §§ 3, 4. Formerly RCW 17.04.050 and 17.04.060.]

**17.04.070 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms of office—Vacancies—Rules and regulations.** If the board of county commissioners establish such district it shall call a special meeting to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established by such board.

Notice of such meeting shall be given by the county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three

public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the county commissioner in whose commissioner district such district is located shall act as chairman and call the meeting to order. The chairman shall appoint two persons to assist him in conducting the election, one of whom shall act as clerk. If such county commissioner be not present the electors of such district then present shall elect a chairman of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chairman of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. \_\_\_\_\_ of \_\_\_\_\_ county (giving number of district and name of county)." If the challenged person shall take such oath or make such affirmation, he shall be entitled to vote; otherwise his vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he desires as the first directors of such district and shall fold his ballot and hand the same to the chairman of the meeting who shall deposit it in a ballot box provided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chairman shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first Monday of March following his election.

Annually thereafter, there shall be held a meeting of the electors of such district on the last Monday in February, except that the directors may, by giving the same notice as is required for the initial meeting, fix an earlier time for the annual meeting on any nonholiday during the months of December, January or February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time and place where the

same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at such annual meeting shall be the same as is required for the initial meeting. In conducting directors' elections, the chairman may accept nominations from the floor but voting shall not be limited to those nominated.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the county commissioners of the county in which such district is located shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chairman and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the board of county commissioners, which bond shall be filed with the county commissioners and shall be conditioned for the faithful discharge of his duties. The cost of such bond shall be paid by the district the same as other expenses of the district. At any annual meeting the method for destroying, preventing and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. The qualified electors of any weed district, at any annual meeting, may make other weeds that are not on the petition subject to control by the weed district by a two-thirds vote of the electors present: *Provided*, That said weeds have been classified by the agricultural experiment station of Washington State University as noxious and: *Provided further*, That the directors of the weed district give public notice in the manner required for initial meetings of the proposed new control of said weeds by the weed district. [1971 ex.s. c 292 § 15; 1961 c 250 § 2; 1929 c 125 § 4; RRS § 2774-1. Formerly RCW 17.04.070 through 17.04.140.]

**Severability**—1971 ex.s. c 292: See note following RCW 26.28.010.

*Elections, illegal voting, crimes and penalties: Chapter 29.85 RCW.*

**17.04.150 Powers**—**Weed inspector.** The board of directors of such weed district shall have power:

(1) To adopt rules and regulations, plans, methods and means for the purpose of destroying, preventing and exterminating the weed or weeds specified in the petition, and to supervise, carry out and enforce such rules, regulations, plans, methods and means.

(2) To appoint a weed inspector and to require from him a bond in such sum as the directors may determine

for the faithful discharge of his duties, and to pay the cost of such bond from the funds of such district; and to direct such weed inspector in the discharge of his duties; and to pay such weed inspector from the funds of such district such per diem or salary for the time employed in the discharge of his duties as the directors shall determine. [1961 c 250 § 3; 1929 c 125 § 9; RRS § 2778-1. Prior: 1921 c 150 § 6.]

**17.04.160 Contiguous lands.** Any city or town contiguous to or surrounded by a weed district formed under this chapter shall provide for the destruction, prevention and extermination of all weeds specified in the petition which are within the boundaries of such city or town, in the same manner and to the same extent as is provided for in such surrounding or contiguous weed district; and it shall be the duty of those in charge of school grounds, playgrounds, cemeteries, parks, or any lands of a public or quasi public nature when such lands shall be contiguous to, or within any weed district, to see that all weeds specified in the petition for the creation of such district are destroyed, prevented and exterminated in accordance with the rules and requirements of such district. [1929 c 125 § 6; RRS § 2775-1.]

*Destruction of weeds, etc., city ordinance: RCW 35.21.310.*

*Weed extermination areas, duty of city or town: RCW 17.08.130.*

**17.04.170 Private lands on Indian reservation**—**United States lands.** Any lands owned by any individual wholly or partly within the United States government Indian reservation may be included within a weed district formed under this chapter, and shall be subject to the same rules, regulations and taxes as other lands within the district; and the board of directors of any weed district are authorized to arrange with the officer or agent in charge of any United States lands, within or contiguous to any such district, for the destruction, prevention and extermination of weeds on such government lands. [1929 c 125 § 7; RRS § 2775-2.]

*Weed extermination areas, similar provisions: RCW 17.08.150.*

**17.04.180 County and state lands.** Whenever there shall be included within any weed district any lands belonging to the county, the boards of county commissioners shall determine the amount of the taxes for which such lands would be liable if the same were in private ownership, and the county commissioners shall appropriate from the current expense fund of the county sufficient money to pay such amounts. Whenever any state lands shall be located within any weed district the county treasurer shall certify annually and forward to the commissioner of public lands, or, if the lands are occupied by or used in connection with any state institution, to the secretary of social and health services, or if the land is under use as state highway right of way, to the director of highways, a statement showing the amount of the tax to which such lands would be liable if the same were in private ownership, separately describing each lot or parcel, and the commissioner of public lands, or the secretary of social and health services, or the director of highways, as the case may be,



shall cause a proper record to be made in their respective offices of the charges against such lands, and shall certify the same to the state auditor thirty days previous to the convening of the biennial session of the legislature, and the state auditor shall, at the next session of the legislature thereafter certify to the legislature the amount of such charges against such lands, and the legislature shall provide for payment of such charges to the weed district by an appropriation out of the general fund of the state treasury or in the case of state highway right of way, the motor vehicle fund of the state treasury, with interest at six percent per annum on the amount of such charges, and without penalties. [1971 ex.s. c 119 § 1; 1961 c 250 § 4; 1929 c 125 § 8; RRS § 2777. Prior: 1921 c 150 § 7.]

*Weed extermination subdistricts, state lands within: RCW 17.08.150.*

**17.04.190 Duties of weed inspector.** It shall be the duty of the weed inspector to carry out the directions of the board of directors and to see that the rules and regulations adopted by the board are carried out. He shall personally deliver or mail to each resident landowner within such district and to any lessee or person in charge of any land within such district and residing in such district, a copy of the rules and regulations of such district; and he shall personally deliver a copy thereof to nonresident landowners or shall deposit a copy of the same in the United States post office in an envelope with postage prepaid thereon addressed to the last known address of such person as shown by the records of the county auditor; and in event no such address is available for mailing he shall post a copy of such rules and regulations in a conspicuous place upon such land. A record shall be kept by the weed inspector of such dates of mailing, posting or delivering such rules and regulations. In case of any railroad such rules and regulations shall be delivered to the section foreman, or to any official of the railroad having offices within the state. Such rules and regulations must be delivered, posted or mailed by the weed inspector as herein provided at least ten days before the time to start any annual operations necessary to comply with such rules and regulations: *Provided*, That after such district shall have been in operation two years such rules and regulations shall be delivered to resident landowners only once every three years, unless such rules and regulations are changed. [1961 c 250 § 5; 1929 c 125 § 10; RRS § 2778-2.]

**17.04.200 Violation of rules and regulations—Notice to destroy weeds—Destruction.** (1) If the weed inspector, or the board of directors, shall find that the rules and regulations of the weed district are not being carried out on any one or more parcels of land within such district, the weed inspector shall give forthwith a notice in writing, on a form to be prescribed by the directors, to the owners, tenants, mortgagees, and occupants, or to the accredited resident agent of any nonresident owner of such lands within the district whereon noxious weeds are standing, being or growing and in danger of going to seed, requiring him to cause

the same to be cut down, otherwise destroyed or eradicated on such lands in the manner and within the time specified in the notice, such time, however, not to exceed seven days. It shall be the duty of the county auditor and county treasurer to make available to the weed inspector lists of owners, tenants, and mortgagees of lands within such district;

(2) If a resident agent of any nonresident owner of lands where noxious weeds are found standing, being or growing cannot be found, the local weed inspector shall post said notice in the form provided by the directors in three conspicuous places on said land, and in addition to posting said notice the local weed inspector shall, at the same time mail a copy thereof by registered or certified mail with return receipt requested to the owner of such nonresident lands, if his post office address is known or can be ascertained by said inspector from the last tax list in the county treasurer's office, and it shall be the duty of the treasurer to furnish such lists upon request by the weed inspector. Proof of such serving, posting and mailing of notice by the weed inspector shall be made by affidavit forthwith filed in the office of the county auditor and it shall be the duty of the county auditor to accept and file such affidavits;

(3) If the weeds are not cut down, otherwise destroyed or eradicated within the time specified in said notice, the local weed inspector shall personally, or with such help as he may require, cause the same to be cut down or otherwise destroyed in the manner specified in said notice. [1961 c 250 § 6; 1937 c 193 § 2; 1929 c 125 § 11; RRS § 2778-3. Prior: 1921 c 150 § 9, part.]

**17.04.210 Statement of expense—Hearing.** The weed inspector shall keep an accurate account of expenses incurred by him in carrying out the provisions of this chapter with respect to each parcel of land entered upon, and the prosecuting attorney of the county or the attorney for the weed district shall cause to be served, mailed or posted in the same manner as provided in this chapter for giving notice to destroy noxious weeds, a statement of such expenses, including description of the land, verified by oath of the weed inspector to the owner, lessee, mortgagee, occupant or agent, or person having charge of said land, and coupled with such statement shall be a notice subscribed by said prosecuting attorney or attorney for the weed district and naming a time and place when and where such matter will be brought before the board of directors of such district for hearing and determination, said statement or notice to be served, mailed or posted, as the case may be, at least ten days before the time for such hearing. [1961 c 250 § 7; 1929 c 125 § 12; RRS § 2778-4.]

**17.04.220 Examination at hearing of expenses—Amount is tax on land—Effect of failure to serve notices.** At the time of such hearing as provided in RCW 17.04.210, or at such time to which the same may be continued or adjourned, the board of directors shall proceed to examine expenses incurred by the weed inspector in controlling weeds on the parcel of land in question, and shall hear such testimony of such other persons who may have legal interest in the proceedings,

and shall enter an order upon its minutes as to what amount, if any, is properly chargeable against the lands for weed control. Cost of serving, mailing and posting shall be added to any amount so found to be due and shall be considered part of the cost of weed control on the land in question. The amount so charged by the directors shall be a tax on the land on which said work was done after the expiration of ten days from the date of entry of said order, unless an appeal be taken as in this chapter provided, in which event the same shall become a tax at the time the amount to be paid shall be determined by the court; and the county treasurer shall enter the same on the tax rolls against the land for the current year and collect it, together with penalty and interest, as other taxes are collected, and when so collected the same shall be paid into the fund for such weed district: *Provided*, That a failure to serve, mail or post any of the notices or statements provided for in this chapter, shall not invalidate said tax, but in case of such failure the lien of such tax shall be subordinate and inferior to the interests of any mortgagee to whom notice has not been given in accordance with the provisions of this chapter. [1961 c 250 § 8; 1929 c 125 § 13; RRS § 2778-5. Prior: 1921 c 150 § 5. FORMER PART OF SECTION: 1925 c 125 § 14 now codified in RCW 17.04.230.]

**17.04.230 Appeal—Notice—Cost bond.** Any interested party may appeal from the decision and order of the board of directors of such district to the superior court of the county in which such district is located, by serving written notice of appeal on the chairman of the board of directors and by filing in the office of the clerk of the superior court a copy of said notice of appeal with proof of service attached, together with a good and sufficient cost bond in the sum of two hundred dollars, said cost bond to run to such district and in all respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice must be served and filed within ten days from the date of the decision and order of such board of directors, and said bond must be filed within five days after the filing of such notice of appeal. Whenever notice of appeal and the cost bond as herein provided shall have been filed with the clerk of the superior court, the clerk shall notify the board of directors of such district thereof, and such board shall forthwith certify to said court all notices and records in said matters, together with proof of service, and a true copy of the order and decision pertaining thereto made by such board. If no appeal be perfected within ten days from the decision and order of such board, the same shall be deemed confirmed and the board shall certify the amount of such charges to the county treasurer who shall enter the same on the tax rolls against the land. When an appeal is perfected the matter shall be heard in the superior court de novo and the court's decision shall be conclusive on all persons served under this chapter: *Provided*, That an appeal may be taken to the supreme court or the court of appeals from the order or decision of the superior court in the manner provided by existing laws, and upon the conclusion of such appeal, the amount of

charges and costs adjudged to be paid shall be certified by the clerk of the superior court to the county treasurer and said treasurer shall proceed to enter the same on his rolls against the lands affected. [1971 c 81 § 56; 1929 c 125 § 14; RRS § 2778-6. Formerly RCW 17.04.220, part, and 17.04.230.]

*Appeals to supreme court: Rules of court: See Rules On Appeal.*

*Cost bonds, civil procedure: RCW 4.84.210 through 4.84.240.*

**17.04.240 Assessments—Classification of property—Tax levy.** The directors shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall prorate the cost so determined and shall levy assessments to be collected with the general taxes of the county. In the event that any bonded or warrant indebtedness pledging tax revenue of the district shall be outstanding on April 1, 1951, the directors may, for the sole purpose of retiring such indebtedness, continue to levy a tax upon all taxable property in the district until such bonded or warrant indebtedness shall have been retired. [1957 c 13 § 2. Prior: 1951 c 107 § 1; 1929 c 125 § 5, part; RRS § 2774-2.]

**Validating—1957 c 13:** "The provisions of this act are retroactive and any actions or proceedings had or taken under the provisions of RCW 17.04.240, 17.04.250, 17.04.260, 17.08.050, 17.08.060, 17.08.070, 17.08.080, 17.08.090, 17.08.100 or 17.08.110 are hereby ratified, validated and confirmed." [1957 c 13 § 14.]

**17.04.245 Assessment—Tax roll—Collection.** Such assessments as are made under the provisions of RCW 17.04.240, by the weed district commissioners, shall be spread by the county assessor on the general tax roll in a separate item. Such assessments shall be collected and accounted for with the general taxes, with the terms and penalties thereto attached. [1951 1st ex.s. c 6 § 1.]

**17.04.250 District treasurer—Duties—Fund.** The county treasurer shall be ex officio treasurer of such district and the county assessor and other county officers shall take notice of the formation of such district and of the tax levy and shall extend the tax on the tax roll against the property liable therefor the same as other taxes are extended, and such tax shall become a general tax against such property, and shall be collected and accounted for as other taxes, with the terms and penalties thereto attached. The moneys collected from such tax shall be paid into a fund to be known as "fund of weed district \_\_\_\_\_ of \_\_\_\_\_ county" (giving the number of district and name of county). All expenses in connection with the operation of such district, including the expenses of initial and annual meetings, shall be paid from such fund, upon vouchers approved by the board of directors of such district. [1957 c 13 § 3. Prior: 1929 c 125 § 5, part; 1921 c 150 § 5; RRS § 2775.]

**17.04.260 Limit of indebtedness.** No weed district shall contract any obligation in any year in excess of the total of the funds which will be available during the current year from the tax levy made in the preceding year and funds received in the current year from services rendered and from any other lawful source, and funds accumulated from previous years. [1963 c 52 § 1; 1961 c 250 § 9; 1957 c 13 § 4. Prior: 1929 c 125 § 5, part; 1921 c 150 § 8; RRS § 2778.]

**17.04.270 Districts organized under prior law—Reorganization.** Any weed district heretofore organized under any law of the state of Washington may become a weed district under the provisions of this chapter and entitled to exercise all the powers and subject to the limitations of a weed district organized under this chapter by the election of three directors for such weed district which shall be done in the same manner as is provided in this chapter for the election of the first directors of a district organized under this chapter. [1929 c 125 § 15; RRS § 2778–7.]

**17.04.280 Officials of district may enter lands—Penalty for prevention.** All weed district directors, all weed inspectors, and all official agents of all weed districts, in the performance of their official duties, have the right to enter and go upon any of the lands within their weed district at any reasonable time for any reason necessary to effectuate the purposes of the weed district. Any person who prevents or threatens to prevent any lawful agent of the weed district, after said agent identifies himself and the purpose for which he is going upon the land, from entering or going upon the land within said weed district at a reasonable time and for a lawful purpose of the weed district, is guilty of a misdemeanor. [1961 c 250 § 10.]

**17.04.900 Disincorporation of district located in class A or AA county and inactive for five years.** See chapter 57.90 RCW.

**17.04.910 Continuation or dissolution of district—Noxious weed control boards.** See RCW 17.10.900.

**Chapter 17.06  
INTERCOUNTY WEED DISTRICTS**

Sections

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**17.06.010 Definitions.** As used in this chapter, unless the context indicates otherwise, "principal board of county commissioners", "principal county treasurer", and "principal county auditor" mean respectively those in the county of that part of the proposed intercounty

weed district in which the greatest amount of acreage is located. [1959 c 205 § 1.]

**17.06.020 Intercounty weed districts authorized.** An intercounty weed district, including all or any part of two counties or more, may be created for the purposes set forth in RCW 17.04.010 by the joint action of the boards of county commissioners of the counties in which any portion of the proposed district is located. [1959 c 205 § 2.]

**17.06.030 Petition for formation—Notice of hearing.** Any one or more freeholders owning more than fifty percent of the acreage desired to be included within the proposed intercounty weed district may file a petition with the principal board of county commissioners praying that their land be included, either separately or with other lands included in the petition, in a weed district to be formed for the purpose of destroying, preventing or exterminating any one or all such weeds, or that such lands be included within a district already formed, or a new district or districts to be formed out of any district or districts then existing. Such petition shall state the boundaries of the proposed district, the approximate number of acres in the proposed district, the particular weed or weeds to be destroyed, prevented or exterminated, the general method or means to be used in such work, and shall contain a list of all known landowners within the proposed district, together with the addresses of such landowners. Upon the filing of such petition the principal board of county commissioners shall notify the other boards of commissioners, shall arrange a time for a joint hearing on the petition, and shall give at least thirty days' notice of the time and place of such hearing by posting copies of such notice in three conspicuous places within the proposed district, and at the main entrance to the court house of each county, and by mailing a copy of such notice to each of the landowners named in the petition at the address named therein. If any of the land described in the petition be owned by the state a copy thereof shall be mailed to the state land commissioner at Olympia. [1959 c 205 § 3.]

**17.06.040 Hearing—Boundaries—Order of establishment.** At the time and place fixed for such hearing, with the chairman of the principal board acting as chairman, the respective boards shall determine by a majority vote of each of the boards of county commissioners of the counties whether such intercounty weed district shall be created, and if they determine that such district shall be created, the respective boards shall fix the boundaries of the portion of the proposed district within their respective counties, but they shall not modify the purposes of the petition with respect to the weed or weeds to be destroyed, prevented and exterminated as set forth in the petition, and they shall not enlarge the boundary of the proposed district, or enlarge or change the boundary or boundaries of any district or districts already formed without first giving notice, as provided in RCW 17.06.030, to all landowners interested. If the respective bodies shall determine that the

weed district petitioned for shall be created each such board shall thereupon enter an order establishing and defining the boundary lines of the proposed district within its respective county. A number shall be assigned to such weed district which shall be the lowest number not already taken or adopted by an intercounty weed district in the state, and thereafter such district shall be known as "weed district No. -----", inserting in the blank the number of the district.

If any county represented does not by a majority vote of its board of commissioners support the petition for an intercounty district, the petition shall be dismissed. [1959 c 205 § 4.]

**17.06.050 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—**

**Terms—Rules.** If the respective boards of county commissioners establish such district the chairman of the principal board shall call a special meeting of landowners to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established.

Notice of such meeting shall be given by the principal county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the chairman shall appoint two persons to assist him in conducting the election, one of whom shall act as clerk. If such chairman be not present the electors of such district then present shall elect a chairman of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chairman of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. ----- (giving number of district)." If the challenged person shall take such oath or make such affirmation, he shall be entitled to vote; otherwise his vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he desires as the

first directors of such district and shall fold his ballot and hand the same to the chairman of the meeting who shall deposit it in a ballot box provided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chairman shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first day of March following his election.

Annually thereafter, there shall be held a meeting of the electors of such district on the first Monday in February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time when and place where the same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at such annual meeting shall be the same as is required for the initial meeting.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the remaining members of the board of directors shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chairman and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the principal board of county commissioners, which bond shall be filed with the same board and shall be conditioned for the faithful discharge of his duties. The cost of such bond shall be paid by the district the same as other expenses of the district.

At any annual meeting the method for destroying, preventing and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. [1971 ex.s. c 292 § 16; 1959 c 205 § 5.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**17.06.060 Directors powers and duties—Taxation—Treasurer—Costs.** The board of directors of an intercounty weed district shall have the same powers and duties as the board of directors of a weed district located entirely within one county, and all the provisions of chapter 17.04 RCW are hereby made applicable to intercounty weed districts: *Provided*, That in the case of evaluation, assessment, collection, apportionment, and any other allied power or duty relating to taxes in connection with the district, the action shall be performed by the officer or board of the county for that area of the district which is located within his respective county, and all materials, information, and other data and all moneys collected shall be submitted to the proper officer of the county of that part of the district in which the greatest amount of acreage is located. Any power which may be or duty which shall be performed in connection therewith shall be performed by the officer or board receiving such as though only a district in a single county were concerned. All moneys collected from such area constituting a part of such district that should be paid to such district shall be delivered to the principal county treasurer who shall be ex officio treasurer of such district. All other materials, information, or data relating to the district shall be submitted to the district board of directors.

Any costs or expenses incurred under this section shall be borne proportionately by each county involved. [1959 c 205 § 6.]

**17.06.070 Actions of county officers—Costs.** Whenever any action is required or may be performed by any county officer or board for all purposes essential to the maintenance, operation, and administration of the district, such action shall be performed by the respective officer or board of the county of that part of the district in which the greatest amount of acreage of the district is located.

All costs incurred shall be borne proportionately by each county in that ratio which the amount of acreage of the district located in that part of each county forming a part of the district bears to the total amount of acreage located in the whole district. [1959 c 205 § 7.]

**17.06.900 Continuation or dissolution of district—Noxious weed control boards.** See RCW 17.10.900.

### Chapter 17.08 WEED EXTERMINATION AREAS

| Sections  |  |
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- 17.08.140 Private land in Indian reservation—United States lands.  
17.08.150 Weed extermination subdistricts.

#### 17.08.010 Definitions.

As used in this chapter:  
"Director" means the director of agriculture;

"Weed district" means a weed district organized pursuant to chapter 17.04 RCW;

"Weed extermination area" means an area set up by the board of county commissioners and the director of agriculture covering any type of land and in which they are responsible for rules, regulations, and enforcement and wherein extermination and prevention are emphasized;

"Crop land" means land ordinarily devoted to the usual cultivated crops in the area or livestock and including orchards, small fruits, hay meadows, and rotation pastures, and including lanes, fence rows, irrigation and drainage ditches, farmsteads, and timber lots included therein;

"Wild land" means open range land, open logged-off land, and unfenced land devoted to the growing and cutting of timber. [1953 c 89 § 1; 1937 c 194 § 1; RRS § 2778-11.]

**Severability—1937 c 194:** "If any provision or section of this act shall be adjudicated to be unconstitutional, such adjudication shall not affect the act as a whole or any part thereof not adjudicated unconstitutional." [1937 c 194 § 8.] This applies to RCW 17.08.010-17.08.150.

"Land" defined as to weed extermination subdistricts: RCW 17.08.150.

**17.08.020 Weed extermination areas—Petition and procedure to establish—Duration of area.** Upon petition of registered land owners representing not less than five percent of the number of farms in the county as shown by the last United States census, the boards of county commissioners of the respective counties and the director of the state department of agriculture shall thoroughly investigate, which investigation shall include a public hearing, notice of which shall be posted under the direction of the director of the state department of agriculture, in at least five conspicuous places within the posted area at least fifteen days prior to the hearing. If such investigation shall indicate a need therefor there shall be created, by a regularly promulgated order, a weed extermination area or areas, within their counties or within the state of Washington for the purpose of destroying, preventing, and exterminating any particular weed, weeds or plants, or all weeds or plants, which are now or may hereafter be classed by the agricultural experiment station of the state college of Washington as noxious or poison weeds or plants detrimental to agriculture or to livestock, when the boards of county commissioners and the director of the department of agriculture of the state of Washington find the creation of such an area and the extermination of noxious or poison weeds or plants growing thereon to be in the interest of the general public welfare of their respective counties or of the state of Washington, and when such investigation shows that conditions are such as to prevent the organization of a weed district in the manner

prescribed in RCW 17.04.010 through 17.04.140, 17.04.240 and 17.04.250. If the boards of county commissioners and the director of the state department of agriculture cannot agree on the establishment or in other matters pertaining to weed extermination areas, the decision of the director shall be final. Upon the establishing of any weed extermination area or areas as provided in this section, the boards of county commissioners and the director of the state department of agriculture shall cause this fact to be published in a newspaper published in the county in which such weed extermination area is situated and of general circulation in such county and such notice shall state the boundaries of the weed extermination area so established. A weed extermination area when established as provided herein shall be maintained as such for a period of not less than five years. Any weed district organized or reorganized as provided in RCW 17.04.010 through 17.04.140, 17.04.240 and 17.04.250 is hereby authorized to maintain its status and organization and to exercise all powers and subject to the limitations granted to it in prior sections of this chapter, even when part or all of such weed district is also included in a weed extermination area. [1937 c 194 § 2; RRS § 2778-12. Formerly RCW 17.08.020, 17.08.030 and 17.08.040.]

**17.08.050 Washington State University to cooperate.** It shall be the duty of the Washington State University through its experiment station and extension service to cooperate with the boards of county commissioners and with the state department of agriculture: (1) To inform them of the names, habits, and growth of noxious or poison weeds and plants which are prevalent in the respective counties in the state of Washington and which are detrimental to agriculture or livestock; (2) to describe methods for the destruction, prevention or extermination of such weeds or plants; and (3) to publish lists of such weeds and plants designated as noxious or poison together with pertinent information thereon for public distribution. [1957 c 13 § 6. Prior: 1937 c 194 § 3, part; RRS § 2778-13, part.]

**Validating—1957 c 13:** Validation of proceedings had under RCW 17.08.050 through 17.08.110, see note following RCW 17.04.240.

**17.08.060 Duties of boards and director.** It shall be the duty of the boards of county commissioners and the director of the state department of agriculture: (1) To determine what methods, rules and regulations are to be used and the specific weed, weeds or plants to be destroyed, prevented or exterminated in the weed extermination areas established: *Provided*, That the directors of any weed district organized and continuing under chapter 17.04 shall have final approval of any regulations applying on crop lands to weeds generally distributed within the boundaries of such weed districts; (2) to carry out, or cause to be carried out, these designated methods, rules and regulations on the weeds or plants specified; but whenever such methods, rules and regulations require only the prevention of seed production of noxious or poison weeds on crop lands, it shall be

the duty of the owner thereof to prevent such seed production; and (3) upon information of the existence of any noxious or poison weed not generally distributed within this state, to thoroughly investigate the existence and the probability of the spread thereof and to establish, maintain and enforce such regulations as in their opinion are necessary to circumscribe and exterminate or prevent the spread of such weed. [1957 c 13 § 7. Prior: 1937 c 194 § 3, part; RRS § 2778-13, part.]

**17.08.070 Rules, regulations and methods to be published.** Methods and rules to be followed in extermination areas may be changed or modified by the authority setting up the areas whenever in their judgment a change is justified, practical, and in the interest of the public welfare. Upon the determination of methods, rules and regulations to be followed in any area, the boards and the director shall publish such methods, rules, and regulations weekly for three consecutive weeks in a newspaper published in the county in which the area is located and of general circulation in the county. [1957 c 13 § 8. Prior: 1951 c 213 § 1; 1937 c 194 § 3, part; RRS § 2778-13, part.]

**17.08.080 Weed supervisor—Owner may be employed.** The boards of county commissioners and the director of the state department of agriculture are hereby authorized to employ a weed supervisor and such additional help and to purchase such equipment and materials as may be necessary in carrying out these duties: *Provided*, That whenever feasible and practicable the landowner shall be employed to carry out the practices required but when so hired the portion of the costs to be paid by him shall be deducted from any payments accruing to him because of such employment. [1957 c 13 § 9. Prior: 1937 c 194 § 3, part; RRS § 2778-13, part.]

**17.08.090 Right of entry.** These commissioners and director or their agents may enter upon any and all lands at any reasonable time in carrying out the duties or making investigations specified in RCW 17.08.050 through 17.08.080 and may take such samples of weeds, weed seeds, or other material necessary in the conduct of these duties or investigations and shall not be subject to action for trespass or damage because of such entrance or the taking of such samples. [1957 c 13 § 10. Prior: 1937 c 194 § 3, part; RRS § 2778-13, part.]

**17.08.100 Cooperation with other agencies.** The boards of county commissioners and the state department of agriculture are authorized to cooperate with other governmental, public or private agencies for the purposes of, and within the limitations of this chapter. [1957 c 13 § 12. Prior: 1937 c 194 § 4, part; RRS § 2778-14, part.]

**17.08.110 Apportionment of cost of eradication.** The cost of eradication work performed in any weed extermination area shall be paid in the following manner: One-fourth thereof shall be paid from the weed control fund of the county in which the land is located and the



remaining three-fourths by the owner of the land upon which the eradication work is performed: *Provided*, That on crop land the share of the cost to be paid by the owner of the land shall be increased by the board to the full cost of the eradication work, and when prevention of seed production only is required on crop land the board, after due notice of its intention so to do in the manner set out in RCW 17.08.120, shall assess the full cost thereof. [1957 c 13 § 13. Prior: 1953 c 89 § 2; 1937 c 194 § 4, part; RRS § 2778-14, part.]

**17.08.120 Prevention of seed production on crop land—Procedure—Charges—Penalty.** If the board and the director find that noxious or poison weeds are in danger of going to seed on crop land contrary to the adopted methods, rules and regulations, it being conclusively presumed that such noxious or poison weeds remaining standing on such date as the board and the director shall determine are in danger of going to seed, they shall give notice and follow the procedure set forth for weed districts for the eradication and control of such weeds: *Provided*, That at the conclusion of the hearing to assess costs and after evidence thereon, the board shall find whether such failure by the owner to cut or otherwise destroy such noxious or poison weeds was wilful and, if it shall so find, it shall further assess a charge in an amount not to exceed the cost of such cutting or destruction as determined at the hearing plus ten dollars for preparation of notices, and in addition thereto filing fees and service costs: *Provided further*, That upon wilful failure to comply a second time, a penalty shall be assessed in an amount not to exceed twice the cost of such cutting or destruction as determined at the hearing. [1959 c 205 § 8; 1953 c 89 § 3; 1937 c 194 § 5; RRS § 2778-15.]

*Weed districts, procedure for eradication and control of weeds: Chapter 17.04 RCW.*

**17.08.130 City or town surrounded by area—Open areas within area.** Any city or town surrounded by a weed extermination area shall provide for the prevention, control or extermination of all weeds which are within the city or town in the same manner and to the same extent as is provided for in the surrounding weed extermination area. Those in charge of open areas subject to the spread of noxious weeds, other than crop land or wild land, including, but not limited to school grounds, play grounds, cemeteries, parks or any land of a public or quasi public nature and transmission line rights-of-way within any weed extermination area shall see that all weeds specified by the board are prevented, controlled, or exterminated in accordance with the rules and requirements of the weed exterminating area. [1953 c 89 § 4.]

*Contiguous lands to weed districts, cities and towns having: RCW 17.04.160.*

*Destruction of weeds, etc., city ordinance: RCW 35.21.310.*

**17.08.140 Private land in Indian reservation—United States lands.** Any private land wholly or partly within an Indian reservation may be included within a weed extermination area and shall be subject to the

same rules, regulations and taxes as other lands within the weed extermination area. The director and the board may arrange with the agent in charge of any United States lands within or contiguous to the weed extermination area for the prevention, control or extermination of weeds on such government lands. [1953 c 89 § 5.]

*Weed districts, similar provisions: RCW 17.04.170.*

**17.08.150 Weed extermination subdistricts.** Whenever the board and the director determine that the extent of noxious weeds on any wild land within the weed extermination area constitutes a danger to adjacent lands, and that the cost of control and prevention of seed production on such wild lands should be shared by such adjacent land as would be benefited thereby, the board may by ordinance establish a weed extermination subdistrict and may include within such subdistrict the wild land on which the control and prevention of seed production work is to be performed and all adjacent lands which will be benefited thereby: *Provided*, That no more wild land in any weed extermination area shall be included in any weed extermination subdistrict than is determined by the board to be necessary to protect the adjacent crop lands, and in any event, not more than twenty-five percent of the total acreage of the subdistrict.

Such ordinance shall be adopted only after public hearing pursuant to notice by one publication in the official county newspaper at least ten days prior to the date of such hearing, which notice shall include a copy of the proposed ordinance of establishment.

Upon the establishment of the subdistrict the board and the director shall determine the amount of money necessary to carry on the work of control and prevention of seed production of noxious weeds on such lands to prevent spreading and shall classify the property within such subdistrict in proportion to the benefits to be derived and, in accordance with such classification, shall prorate the cost so determined and shall levy assessments to be collected with the general taxes of the county: *Provided*, That the wild land upon which the work of control and prevention of seed production is to be performed shall be assessed on the same basis as the average benefit per acre but in no event shall wild land bear more than twenty-five percent of the total cost of such control and prevention of seed production: *Provided further*, That if any weed extermination subdistrict includes any state lands, the state shall be responsible for and perform all necessary seed prevention and control work on such state lands.

The term "land" shall include all rights-of-way which shall pay the same percentage of cost as that charged against the contiguous lands. Any portion of the owner's share of the expense paid out of the county weed fund, together with any penalty assessed by the board, shall be included on the tax rolls against the land for the current year and collected as other taxes, and it shall be paid into the county weed control fund. [1953 c 89 § 6.]



**Chapter 17.10**  
**NOXIOUS WEEDS—CONTROL BOARDS**

## Sections

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- 17.10.270 Noxious weed control boards—Authority to purchase liability insurance.
- 17.10.900 Weed districts—Continuation—Dissolution.
- 17.10.910 Severability—1969 ex.s. c 113.

**17.10.010 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Noxious weed" means any plant growing in a county which is determined by the state noxious weed control board to be injurious to crops, livestock, or other property and which is included for purpose of control on such county's noxious weed list.

(2) "Person" means any individual, partnership, corporation, firm, the state or any department, agency, or subdivision thereof, or any other entity.

(3) "Owner" means the person in actual control of property, whether such control is based on legal or equitable title or on any other interest entitling the holder to possession and, for purposes of liability, pursuant to RCW 17.10.170 or 17.10.210, means the possessor of legal or equitable title or the possessor of an easement:

*Provided*, That when the possessor of an easement has the right to control or limit the growth of vegetation within the boundaries of an easement, only the possessor of such easement shall be deemed, for the purpose of this chapter, an "owner" of the property within the boundaries of such easement.

(4) As pertains to the duty of an owner, the word "control" and the term "prevent the spread of noxious weeds" shall mean conforming to the standards of noxious weed control or prevention adopted by rule or regulation by an activated county noxious weed control board. [1969 ex.s. c 113 § 1.]

**17.10.020 County noxious weed control boards—Created—Jurisdiction—Inactive status.** (1) In each county of the state there is hereby created a noxious weed control board, which shall bear the name of the county within which it is located. The jurisdictional boundaries of each board shall be coextensive with the boundaries of the county within which it is located.

(2) Each noxious weed control board shall be inactive until activated pursuant to the provisions of RCW 17.10.040. [1969 ex.s. c 113 § 2.]

**17.10.030 State noxious weed control board—Members—Terms—Elections—Meetings—Expenses.** There is hereby created a state noxious weed control board which shall be comprised of six members, three to be elected by the members of the various activated county noxious weed control boards. Three of the members of such board shall be residents of a county in which a county noxious weed control board has been activated and a member of said board, and be engaged in primary agricultural production at the time of their election and such qualification shall continue through their term of office. One such primary agricultural producer shall be elected from the west side of the state, the crest of the Cascades being the dividing line, and two from the east side of the state. The director of agriculture shall be a member of the board, and the director of the agricultural extension service shall be a nonvoting member of the board. The elected members of the board shall appoint one member of the board who may be an expert in the field of weed control. The term of office for all elected members and the appointed members of the board shall be three years from their date of election or appointment.

The director of agriculture shall provide for an election of the first members of the state noxious weed control board. Such election shall not take place sooner than six months nor later than twelve months after one county noxious weed control board has been activated on the west side of the Cascade mountains and two such county noxious weed boards have been activated on the east side of the Cascade mountains. The first board members elected to the state noxious weed control board shall serve staggered terms as follows:

(1) The board member representing the west side of the state on the activated county noxious weed control board as primary agricultural producer, shall be appointed for a term of one year and shall be designated "Position No. 1".

(2) The two board members representing the east side of the state shall be appointed to terms of two and three years and shall be designated respectively as positions "No. 2" and "No. 3".

(3) The member of the board subsequently appointed by the elected members shall be appointed for a three year term and shall be designated "Position No. 4".

(4) The director of agriculture and the director of agricultural extension service shall serve so long as they are vested with their respective titular positions, and their positions shall be "No. 5" and "No. 6" respectively.

Elections for the elected members of the board shall be held thirty days prior to the expiration date of their respective terms.

Nominations and elections shall be by mail and conducted by the director of agriculture.

The board shall conduct its first meeting within thirty days after all its members have been elected. The board shall elect from its members a chairman and such other officers as may be necessary. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The members of the board shall serve without salary, but shall be compensated for the actual and necessary expenses incurred in the performance of their duties under this chapter. [1969 ex.s. c 113 § 3.]

**17.10.040 Activation of inactive county noxious weed control board.** An inactive county noxious weed control board may be activated by any one of the following methods:

(1) Either upon a petition filed by one hundred landowners each owning one acre or more of land within the county or, on its own motion, the board of county commissioners shall hold a hearing to determine whether there is a need, due to a damaging infestation of noxious weeds, to activate the county noxious weed control board. If such a need is found to exist, then the board of county commissioners shall, in the manner provided by RCW 17.10.050, appoint five persons to hold seats on the county's noxious weed control board.

(2) If the county's noxious weed control board is not activated within one year following a hearing by the board of county commissioners to determine the need for activation, then upon the filing with the state noxious weed control board of a petition comprised either of the signatures of at least two hundred owners, each owning one acre of land or more within the county, or of the signatures of a majority of an adjacent county's noxious weed control board, the state board shall, within six months of the date of such filing, hold a hearing in the county to determine the need for activation. If a need for activation is found to exist, then the state board shall order the board of county commissioners to activate the county's noxious weed control board and to appoint members to such board in the manner provided by RCW 17.10.050. [1969 ex.s. c 113 § 4.]

**17.10.050 Activated county noxious weed control board—Members—Election—Meetings—Quorum—Expenses—Officers—Vacancy.** (1) Each activated county noxious weed control board shall consist of five voting members who shall, at the board's inception, be appointed by the board of county commissioners and elected thereafter by the property owners subject to the board. In appointing such voting members, the board of county commissioners shall divide the county into five sections, none of which shall overlap and each of which shall be of the same approximate area, and shall appoint a voting member from each section. At least four of such voting members shall be engaged in the primary production of agricultural products. There shall be one nonvoting member on such board who shall be the chief county extension agent or a county extension agent appointed by the chief county extension agent. Each voting member of the board shall serve a term of two years, except that the board of county commissioners shall, when a board is first activated under this chapter, designate two voting members to serve terms of one year. The board members shall not receive a salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties.

(2) The elected members of the board shall represent the same districts designated by the county commissioners in appointing members to the board at its inception. Members of the board shall be elected at least thirty days prior to the expiration of any board member's term of office.

The nomination and election of elected board members shall be conducted by the board at a public meeting held in the section where board memberships are about to expire. Elections at such meetings shall be by secret ballot, cast by the landowners residing in the section where an election for a board member is being conducted. The nominee receiving the majority of votes cast shall be deemed elected, and if there is only one nomination, said nominee shall be deemed elected unanimously.

Notice of such nomination and election meeting shall be mailed to all affected landowners thirty days prior to such meeting. Notice shall be published at least twice in a weekly or daily newspaper of general circulation in said section: *Provided*, That mailed notice shall not be required if assessments provided for in \*section 4 of this 1974 amendatory act are not invoked.

(3) Within thirty days after all the members have been appointed, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chairman and such other officers as may be necessary.

(4) In case of a vacancy occurring in any elected position on a county noxious weed control board, the county commissioners of the county in which such board is located shall appoint a qualified person to fill the vacancy for the unexpired term. [1974 1st ex.s. c 143 § 1; 1969 ex.s. c 113 § 5.]

**\*Reviser's note:** "section 4 of this 1974 amendatory act" [1974 1st ex.s. c 143] was vetoed. The section purported to amend RCW 17.10.240.

**17.10.060 Activated county noxious weed control board—Weed inspector—Authority to acquire equipment and products, hire personnel—Rules and regulations.** (1) Each activated county noxious weed control board may employ a weed inspector whose duties shall be fixed by the board but which shall include inspecting land to determine the presence of noxious weeds. Each board may purchase, rent or lease such equipment, facilities or products and may hire such additional persons as it deems necessary for the administration of the county's noxious weed control program.

(2) Each activated county noxious weed control board shall have the power to adopt such rules and regulations, subject to notice and hearing as provided in chapter 42.32 RCW as now or hereafter amended, as are necessary for an effective county weed control or eradication program. [1969 ex.s. c 113 § 6.]

**17.10.070 State noxious weed control board—Powers.** In addition to the powers conferred on the state noxious weed control board under other provisions of this chapter, it shall have power to:

(1) Require the board of county commissioners or the noxious weed control board of any county to report to it concerning the presence of noxious weeds and measures, if any, taken or planned for the control thereof;

(2) Employ a state weed supervisor who shall act as executive secretary of the board and who shall disseminate information relating to noxious weeds to county noxious weed control boards and who shall work to coordinate the efforts of the various county and regional noxious weed control boards;

(3) Do such things as may be necessary and incidental to the administration of its functions pursuant to this chapter. [1969 ex.s. c 113 § 7.]

**17.10.080 Proposed noxious weed list—Adoption by state noxious weed control board—Dissemination.** The state noxious weed control board shall each year or more often, following a hearing, adopt a list comprising the names of those plants which it finds to be injurious to crops, livestock or other property. At such hearing any county noxious weed control board may request the inclusion of any plant to the list to be adopted by the state board.

Such list when adopted shall be designated as the "proposed noxious weed list", and the state board shall send a copy of the same to each activated county noxious weed control board, to each regional noxious weed control board, and to the board of county commissioners of each county with an inactive noxious weed control board. [1969 ex.s. c 113 § 8.]

**17.10.090 Proposed noxious weed list—Selection of weeds for control by county board.** Each county noxious weed control board shall, within thirty days of the receipt of the proposed noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the proposed list which it finds

necessary to be controlled in the county. The weeds thus selected shall be classified within this county as noxious weeds, and such weeds shall comprise the county noxious weed list. [1969 ex.s. c 113 § 9.]

**17.10.100 Order to county board to include weed from state board's list in county's noxious weed list.** Where any of the following occur, the state noxious weed control board may, following a hearing, order any county noxious weed control board to include a proposed noxious weed from the state board's list in the county's noxious weed list:

(1) Where the state noxious weed control board receives a petition from at least one hundred landowners owning one acre or more of land within the county requesting that such weed be listed.

(2) Where the state noxious weed control board receives a request for such inclusion from an adjacent county's noxious weed control board, which board has included such weed in the county list and which board alleges that its noxious weed control program is being hampered by the failure to include such weed on the county's noxious weed list. [1969 ex.s. c 113 § 10.]

**17.10.110 Regional noxious weed control board—Creation.** A regional noxious weed control board comprising the area of two or more counties may be created as follows:

Either each board of county commissioners or each noxious weed control board of two or more counties may, upon a determination that the purpose of this chapter will be served by the creation of a regional noxious weed control board, adopt a resolution providing for a limited merger of the functions of their respective counties noxious weed control boards. Such resolution shall become effective only when a similar resolution is adopted by the other county or counties comprising the proposed regional board. [1969 ex.s. c 113 § 11.]

**17.10.120 Regional noxious weed control board—Members—Meetings—Quorum—Officers—Effect on county boards.** In any case where a regional noxious weed control board is created, the county noxious weed control board comprising the regional board shall still remain in existence and shall retain all powers and duties provided for such boards under this chapter except for the powers and duties described in RCW 17.10.090.

The regional noxious weed control board shall be comprised of the voting members and the nonvoting members of the component counties noxious weed control boards who shall, respectively, be the voting and nonvoting members of the regional board. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect a chairman from its members and such other officers as may be necessary. Members of the regional board shall serve without salary. [1969 ex.s. c 113 § 12.]

**17.10.130 Regional noxious weed control board—Powers and duties.** The powers and duties of a regional noxious weed control board are as follows:

(1) The regional board shall, within forty days of the receipt of the proposed noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the proposed list which it finds necessary to be controlled in the region. The weeds thus selected shall comprise the county noxious weed list of each county in the region.

(2) The regional board shall render such advice as may be necessary to coordinate the noxious weed control programs of the counties within the region and the regional board shall adopt a regional plan for the control of noxious weeds. [1969 ex.s. c 113 § 13.]

**17.10.140 Owner's duty to control spread of noxious weeds.** Except as is provided under RCW 17.10.150, every owner shall perform, or cause to be performed such acts as may be necessary to control and to prevent the spread of noxious weeds from his property. [1969 ex.s. c 113 § 14.]

**17.10.150 Owner's duty in controlling noxious weeds on nonagricultural land—Buffer strip defined—Limitation.** (1) The board of county commissioners in each county may classify lands for the purposes of this chapter. In regard to any land which is classified by the county noxious weed control board as not being used for agricultural purposes, the owner thereof shall have the following limited duty to control noxious weeds present on such land:

(a) The owner shall control and prevent the spread of noxious weeds on any portion of such land which is within the buffer strip around land used for agricultural purposes. For lands east of the crest of the Cascade mountain range, the buffer strip shall be land which is within two hundred feet of land used for agricultural purposes. For lands west of the crest of the Cascade mountain range, the buffer strip shall be land which is within one thousand feet of land used for agricultural purposes.

(b) In any case of a serious infestation of a particular noxious weed, which infestation exists within the buffer strip of land described in paragraph (a) of subsection (1) of this section, and which extends beyond said buffer strip of land, the county noxious weed control board may require that the owner of such buffer strip of land take such measures, both within said buffer zone of land as well as on other land owned by said owner contiguous to said buffer strip of land on which such serious infestation has spread, as are necessary to control and prevent the spread of such particular noxious weed.

For purposes of this subsection, land shall not be classified as or considered as being used for agricultural purposes when the sole reason for classifying or considering it as such is that it is being used for the growing, planting or harvesting of trees for timber.

(2) In regard to any land which is classified by the county noxious weed control board as scab or range land, the board may limit the duty of the owner thereof

to control noxious weeds present on such land. The board may share the cost of controlling such weeds, may provide for a buffer strip around the perimeter of such land or may take any other reasonable measures to control noxious weeds on such land at an equitable cost to the owner. The board shall classify as range or scab land all that land within the county which the board finds to be of a relatively low value per acre, and on which the cost of controlling all of the noxious weeds present would be disproportionately high when compared to the value per acre of such land. [1974 1st ex.s. c 143 § 2; 1969 ex.s. c 113 § 15.]

**17.10.160 Right of entry—Civil liability.** Any authorized agent or employee of the county noxious weed control board or of the state noxious weed control board or of the department of agriculture may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens of weeds or other materials, general inspection, and the performance of eradication or control work. Such entry may be made without the consent of the owner: *Provided*, That the consent of the owner of any land shall be obtained where, due to fire danger, the owner or any state agency has either closed the land to public entry: *Provided further*, That prior to carrying out the purposes for which the entry is made, the official making such entry or someone in his behalf, shall have first made a reasonable attempt to notify the owner of the property as to the purpose and need for the entry: *Provided further*, That civil liability for negligence shall lie in any case in which entry and any of the activities connected therewith are not undertaken with reasonable care. [1969 ex.s. c 113 § 16.]

**17.10.170 Finding presence of noxious weeds—Failure of owner to control—Control by county board—Liability of owner for expense—Lien—Alternative.** (1) Whenever the county noxious weed control board finds that noxious weeds are present on any parcel of land, and that the owner thereof is not taking prompt and sufficient action to control the same, pursuant to the provisions of RCW 17.10.140, it shall notify such owner that a violation of this chapter exists. Such notice shall be in writing, identify the noxious weeds found to be present, order prompt control action, and specify the time within which the prescribed action must be taken.

(2) If the owner does not take action to control the noxious weeds in accordance with the notice, the county board shall control them, or cause their being controlled, at the expense of the owner. The amount of such expense shall constitute a lien against the property and may be enforced by proceedings on such lien. The owner shall be liable for payment of the expense, and nothing in this chapter shall be construed to prevent collection of any judgment on account thereof by any means available pursuant to law, in substitution for enforcement of the lien.

(3) The county auditor shall record in his office any lien created under this section, and any such lien shall

bear interest at the rate of eight percent per annum from the date on which the county noxious weed control board approves the amount expended in controlling such weeds.

(4) As an alternative to the enforcement of any lien created under subsection (2) of this section, the board of county commissioners may by resolution or ordinance require that each such lien created shall be collected by the treasurer in the same manner as a delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes shall bear interest at the same rate as delinquent real property taxes and such interest shall accrue as of the date notice of the lien is sent to the owner: *Provided*, That any collections for such lien shall not be considered as tax. [1974 1st ex.s. c 143 § 3; 1969 ex.s. c 113 § 17.]

**17.10.180 Hearing on liability for expense of control—Notice—Review.** Any owner, upon request pursuant to the rules and regulation of the county noxious weed control board, shall be entitled to a hearing before the board on any charge or cost for which such owner is alleged to be liable pursuant to RCW 17.10.170 or 17.10.210. The board shall send notice by certified mail, to each owner residing within the county at his last known address, as to any such charge or cost and as to his right of a hearing. If the owner does not reside within the county, such notice shall be sent by certified mail. Any determination or final action by the board shall be subject to judicial review by a proceeding in the superior court in the county in which the property is located, and such court shall have original jurisdiction to determine any suit brought by the owner to recover damages allegedly suffered on account of control work negligently performed: *Provided*, That no stay or injunction shall lie to delay any such control work subsequent to notice given pursuant to RCW 17.10.160 or pursuant to an order under RCW 17.10.210. [1969 ex.s. c 113 § 18.]

**17.10.190 Notice and information as to noxious weed control.** Each activated county noxious weed control board shall cause to be published in at least one newspaper of general circulation within its area a general notice during the month of March and at such other times as may be appropriate. Such notice shall direct attention to the need for noxious weed control and shall give such other information with respect thereto as may be appropriate, or shall indicate where such information may be secured. In addition to the general notice required hereby, the county noxious weed control board may use such media for the dissemination of information to the public as may be calculated to bring the need for noxious weed control to the attention of owners. The board may consult with individual owners concerning their problems of noxious weed control and may provide them with information and advice, including giving specific instructions and methods when and how certain named weeds are to be controlled. Such

methods may include definite systems of tillage, cropping, management, and use of livestock. Publication of a notice as required by this section shall not be a condition precedent to the enforcement of this chapter. [1969 ex.s. c 113 § 19.]

**17.10.200 Control of noxious weeds on federal and Indian lands.** (1) In the case of land owned by the United States on which control measures of a type and extent required pursuant to this chapter have not been taken, the county noxious weed control board, with the approval of both the director of the department of agriculture and the appropriate federal agency, may perform such work. The cost thereof, if not paid by the agency managing the land, shall be a state charge and may be paid from any funds available to the department of agriculture for the administration of this chapter.

(2) The county noxious weed control board is authorized to enter into any reasonable agreement with the appropriate authorities for the control of noxious weeds on Indian lands. [1969 ex.s. c 113 § 20.]

**17.10.210 Quarantine of land—Order—Expense.** (1) Whenever the county noxious weed control board finds that a parcel of land is so seriously infested with noxious weeds that control measures cannot be undertaken thereon without quarantining the land and restricting or denying access thereto or use thereof, the board, with the approval of the director of the department of agriculture, may issue an order for such quarantine and restriction or denial of access or use. Upon issuance of the order, the board promptly shall commence necessary control measures and shall prosecute them with due diligence.

(2) An order of quarantine shall be served, by any method sufficient for the service of civil process, on all persons known to qualify as owners of the land within the meaning of this chapter.

(3) The expense of control work undertaken pursuant to this section, and of any quarantine in connection therewith, shall be borne as follows: One-third by the owner, one-third by the county noxious weed control board, and one-third by the department of agriculture. [1969 ex.s. c 113 § 21.]

**17.10.220 Petition for director to change rules.** The state noxious weed control board may petition the director, pursuant to the provisions of RCW 34.04.060, to adopt, amend, change or repeal rules necessary to carry out the purposes of this chapter. [1969 ex.s. c 113 § 22.]

**17.10.230 Violations—Penalty.** Any owner knowing of the existence of any noxious weeds on his land who fails to control such weeds in accordance with this chapter and rules and regulations in force pursuant thereto; any person who enters upon any land in violation of an order in force pursuant to RCW 17.10.210; any person who prevents or threatens to prevent entry upon land as authorized in RCW 17.10.160; or any person who interferes with the carrying out of the provisions of this chapter, shall be subject to a fine not to

exceed one hundred dollars on account of each violation. [1969 ex.s. c 113 § 23.]

**17.10.240 Special assessments, appropriations for weed control.** (1) The activated county weed control boards of each county shall annually submit a budget to the board of county commissioners for the operating cost of the county's weed program for the ensuing fiscal year. Control of weeds are a special benefit to the lands within any such district. The board of county commissioners may in lieu of a tax, levy an assessment against the land for this purpose. The county weed control board shall classify the lands into suitable classifications, and assess for each class such an amount as shall seem just, but which shall be uniform per acre in its respective class. The findings by the board of such special benefits, when so declared by resolution and spread upon the minutes of the board shall be conclusive that the same is of special benefit to the lands within the district.

(2) In addition, the board of county commissioners may appropriate money from the county general fund necessary for the administration of the county noxious weed control program. In addition the board of county commissioners may make emergency appropriations as it deems necessary for the implementation of this chapter. [1969 ex.s. c 113 § 24.]

**17.10.250 Applications for state financial aid.** The board of county commissioners of any county with an activated noxious weed control board may apply to the state noxious weed control board for state financial aid in an amount not to exceed fifty percent of the locally funded portion of the annual operating cost of such noxious weed control board. Any such aid shall be expended from the general fund from such appropriation as the legislature may provide for this purpose. [1969 ex.s. c 113 § 25.]

**17.10.260 Administrative powers to be exercised in conformity with administrative procedure act—Use of weed control substances subject to water pollution control act.** The administrative powers granted under this chapter to the director of the department of agriculture and to the state noxious weed control board shall be exercised in conformity with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended. The use of any substance to control noxious weeds shall be subject to the provisions of the Water Pollution Control Act, chapter 90.48 RCW, as now or hereafter amended. [1969 ex.s. c 113 § 28.]

**17.10.270 Noxious weed control boards—Authority to purchase liability insurance.** Each noxious weed control board may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1974 1st ex.s. c 143 § 5.]

**17.10.900 Weed districts—Continuation—Dissolution.** Any weed district formed under chapter 17.04 or 17.06 RCW prior to the enactment of this chapter, shall continue to operate under the provisions of the chapter under which it was formed: *Provided*, That if ten percent of the landowners subject to any such weed district, and the county weed board upon its own motion, petition the county commissioners for a dissolution of the weed district, the county commissioners shall provide for an election to be conducted in the same manner as required for the election of directors under the provisions of chapter 17.04 RCW, to determine by majority vote of those casting votes, if such weed district shall continue to operate under the act it was formed. The land area of any dissolved weed district shall forthwith become subject to the provisions of this chapter. [1969 ex.s. c 113 § 26.]

**17.10.910 Severability—1969 ex.s. c 113.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 113 § 27.]

## Chapter 17.12 AGRICULTURAL PEST DISTRICTS

### Sections

|           |   |
|-----------|---|
| 17.12.010 | Pest districts authorized.  |
| 17.12.020 | Petition—Notice—Hearing.  |
| 17.12.030 | Determination—Boundaries of district.   |
| 17.12.040 | Designation of district.  |
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| 17.12.060 | Supervision of the district.  |
| 17.12.080 | Levies on state and county lands—Levies on state lands to be added to rental or purchase price. |
| 17.12.100 | Limit of indebtedness.  |

*Rodents: Chapter 17.16 RCW.*

**17.12.010 Pest districts authorized.** For the purpose of destroying or exterminating squirrels, prairie dogs, gophers, moles or other rodents, or of rabbits or any predatory animals that destroy or interfere with the crops, fruit trees, shrubs, valuable plants, fodder, seeds or other agricultural plants or products, thing or pest injurious to any agricultural plant or product, or to prevent the introduction, propagation, growth or increase in number of any of the above described animals, or rodents, the board of county commissioners of any county may create a pest district or pest districts within such county and may enlarge any district containing a lesser territory than the whole county, or reduce any district already created, or combine or consolidate districts or divide, or create new districts from time to time in the manner hereinafter set forth. [1919 c 152 § 1; RRS § 2801.]

**17.12.020 Petition—Notice—Hearing.** Whenever ten or more resident freeholders in any county petition the board of county commissioners, asking that their lands be included, either separately or with other lands designated in the petition in a district to be formed for the purpose of preventing, destroying, or exterminating any of the animals, rodents or other such



things described in RCW 17.12.010, or that such lands be included within a district already formed by the enlargement of such district, or a new district or districts be formed out of a district or districts then in existence or out of territory partly in districts already formed and not included in any district, and such petition indicating the boundaries of such proposed district, whether all or any part of such county, and stating the purpose of such district, the board shall fix a time for the hearing of such petition and shall give at least thirty days notice of the time and place of such hearing by posting copies of such notice of the time and place of such hearing in three conspicuous places within the proposed district and posting one copy of such notice at the court house or place of business of the board, and also by mailing to each freeholder within the proposed district a copy of such notice, to his last known residence, if known, and if not known to the clerk of such board, then and in that event the posting shall be deemed sufficient: *Provided, however,* If the board shall deem it impractical to mail notices to each freeholder, within the proposed district, or if the post office address of all the freeholders are not known, then in that event when recited in a resolution adopted by the board, the notice in addition to posting, shall be published once a week for three successive weeks in the county official paper if there is such, and if there be no official paper, then in some paper published in said county, and if there be no paper published in said county, then in some paper of general circulation within the proposed district. The persons in whose name the property is assessed shall be deemed the owners thereof for the purpose of notice as herein required: *Provided, however,* That for lands belonging to the state, the commissioner of public lands shall be notified, and for lands belonging to the county, the county auditor shall be notified, and if such lands are under lease or conditional sale the lessee or purchaser shall also be notified in the manner above provided. Any person interested may appear at the time of such hearing and may under such rules and regulations as the board may prescribe give his or her reasons for or objections to the creation of such a district. [1919 c 152 § 2; RRS § 2802.]

**17.12.030 Determination—Boundaries of district.** Upon the hearing of such petition the board shall determine whether such a district shall be created and shall fix the boundaries thereof, but shall not enlarge the boundaries of proposed districts or enlarge or change the boundary or boundaries of any district or districts already formed without first giving the notice to all parties interested as provided in RCW 17.12.020. [1919 c 152 § 3; RRS § 2803.]

**17.12.040 Designation of district.** If the board shall deem the interests of the county or of any particular section thereof will be benefited by the creation of such a district or districts, or the changing thereof, it shall make a record thereof upon the minutes of the board and shall designate such territory in each such district as "Pest District \_\_\_\_\_ for \_\_\_\_\_ County". [1919 c 152 § 4; RRS § 2804.]

**17.12.050 Treasurer—Tax levies.** The county treasurer shall be ex officio treasurer for each of such districts so formed and the county assessor and other county officers shall take notice of the formation of such district or districts and shall be governed thereby according to the provisions of this chapter. The assessment or the tax levies as hereinafter provided for shall be extended on the tax rolls against the property liable therefor the same as other assessments or taxes are extended, and shall become a part of the general tax against such property and be collected and accounted for the same as other taxes are, with the terms and penalties attached thereto. The moneys so collected shall be held and disbursed as a special fund for such district and shall be paid out only on warrant issued by the county auditor upon voucher approved by the board of county commissioners. [1919 c 152 § 5; RRS § 2805.]

**17.12.060 Supervision of the district.** The agricultural expert in counties having an agricultural expert, shall under the direction of the state college of Washington have general supervision of the methods and means of preventing, destroying or exterminating any animals or rodents as herein mentioned within his county, and of how the funds of any pest district shall be expended to best accomplish the purposes for which such funds were raised; in counties having no such agricultural expert each county commissioner shall be within his respective commissioner district, ex officio supervisor, or the board may designate some such person to so act, and shall fix his compensation therefor. Whenever any member of the board shall act as supervisor he shall be entitled to his actual expenses and his per diem as county commissioner the same as if he were doing other county business. [1919 c 152 § 6; RRS § 2806.]

*Reviser's note:* The law authorizing the employment of agricultural experts was 1913 c 18 as amended by 1919 c 193 but since repealed by 1949 c 181 which authorizes cooperative extension work in agriculture and home economics. See RCW 36.50.010.

**17.12.080 Levies on state and county lands—Levies on state lands to be added to rental or purchase price.** Whenever there shall be included within any pest district lands belonging to the state or to the county the board of county commissioners shall determine the amount of the tax or assessment for which such land would be liable if the same were in private ownership for each subdivision of forty acres or fraction thereof. The assessor shall transmit to the county commissioners a statement of the amounts so due from county lands and the county commissioners shall appropriate from the current expense fund of the county sufficient money to pay such amounts. A statement of the amounts due from state lands within each county shall be annually forwarded to the commissioner of public lands who shall examine the same and if he finds the same correct and that the determination was made according to law, he shall certify the same and issue a warrant for the payment of same against any funds in the state treasury appropriated for such purposes.



The commissioner of public lands shall keep a record of the amounts so paid on account of any state lands which are under lease or contract of sale and such amounts shall be added to and become a part of the annual rental or purchase price of the land, and shall be paid annually at the time of payment of rent or payment of interest or purchase price of such land. When such amounts shall be collected by the commissioner of public lands it shall be paid into the general fund in the state treasury. [1973 c 106 § 11; 1919 c 152 § 8; RRS § 2808. Formerly RCW 17.12.080 and 17.12.090.]

**17.12.100 Limit of indebtedness.** No district shall be permitted to contract obligations in excess of the estimated revenues for the two years next succeeding the incoming [incurring] of such indebtedness and it shall be unlawful for the county commissioners to approve of any bills which will exceed the revenue to any district which shall be estimated to be received by such district during the next two years. [1919 c 152 § 9; RRS § 2809.]

*County budget as limitation on incurring liability: RCW 36.40.100.*

## Chapter 17.16 RODENTS

### Sections

- 17.16.010 "Rodent" defined.
- 17.16.020 Washington State University to administer.
- 17.16.030 Washington State University to employ inspectors.
- 17.16.040 Powers and duties.
- 17.16.050 Cooperation with federal agency.
- 17.16.060 Duty of persons to destroy rodents.
- 17.16.070 Notice to destroy—University may destroy if owner fails to do so.
- 17.16.080 Statement of expense—Notice of hearing.
- 17.16.090 Hearing—Expense to be taxed to land—Limitation.
- 17.16.100 Entry on tax rolls—Rotating fund.
- 17.16.110 Appeal.
- 17.16.130 Poisons to be labeled.

*Agricultural pest districts: Chapter 17.12 RCW.*

**17.16.010 "Rodent" defined.** The term "rodent" wherever used in RCW 17.16.010 through 17.16.130 shall be held and construed to mean and include ground squirrels, pocket gophers, rabbits, and such other rodents as the Washington State University shall designate as injurious to the agricultural interests of the state. [1921 c 140 § 1; RRS § 2788.]

**17.16.020 Washington State University to administer.** The administration of RCW 17.16.010 through 17.16.130 shall be under the supervision and control of the state of Washington by and through the extension service of the Washington State University, in cooperation with the board of county commissioners in the various counties of the state and the bureau of biological survey of the United States department of agriculture. [1919 c 140 § 3; RRS § 2790.]

**17.16.030 Washington State University to employ inspectors.** The Washington State University is hereby empowered and it shall be its duty to employ persons as it may deem necessary to inspect rodent conditions and

to supervise the destruction and extermination of injurious rodents in such counties as shall cooperate with said Washington State University in such work. [1921 c 140 § 4; RRS § 2791.]

**17.16.040 Powers and duties.** The Washington State University shall be authorized and directed to supervise the extermination of rodents by any land owner, occupant, agent in charge, or lessee, to prepare poisons and baits for that purpose, and to enter upon any farm, rights-of-way, grounds, or premises for the purpose of ascertaining rodent conditions or for the purpose of exterminating the same as in RCW 17.16.010 through 17.16.130 provided. [1921 c 140 § 7; RRS § 2794.]

**17.16.050 Cooperation with federal agency.** The Washington State University is hereby authorized to cooperate with the bureau of biological survey of the United States department of agriculture, and to make such arrangements as it may deem advisable to join with said bureau in the employment of persons to inspect rodent conditions and to supervise the destruction and extermination of injurious rodents. [1921 c 140 § 5; RRS § 2792.]

**17.16.060 Duty of persons to destroy rodents.** It shall be the duty of every person, firm or corporation owning, possessing or having the care or charge of any land or lands in the state to destroy and exterminate any and all such rodents thereon. [1921 c 140 § 2; RRS § 2789.]

**17.16.070 Notice to destroy—University may destroy if owner fails to do so.** Whenever the person or persons designated and employed by the Washington State University for that purpose shall, upon inspection and investigation, determine that the owner, occupant, agent in charge, or lessee of any land has failed or neglected to exterminate the rodents on said land, and that such land is infested with such rodents, it shall notify said owner, occupant, agent in charge or lessee to that effect. Said notice shall describe the land involved, contain a finding that said land is infested with rodents, naming the kind, direct what steps shall be taken to exterminate said rodents, and inform the owner, occupant, agent in charge, or lessee that, unless such steps are begun within a period of ten days after service of said notice (exclusive of the day of service), said land will be entered upon and the rodents exterminated and the expense of such extermination will be charged as a tax against said land, and collected as general taxes are collected. A copy of said notice shall be served personally upon the owner, occupant, agent in charge or lessee if the same is found in the county in which such land is situated. If said owner, occupant, agent in charge, or lessee cannot with reasonable diligence be found in the county, a certificate to that effect, together with said notice, shall be mailed to the person appearing on the records of the county treasurer's office as last paying general taxes on said land, and a copy of said notice shall be posted in a conspicuous place on said land. After the expiration of ten days from the date of service, or mailing and posting, as the case may be, of said

notice as herein provided, the Washington State University shall enter said land and exterminate the rodents thereon. [1921 c 140 § 8; RRS § 2795.]

*Property taxes, collection of: Chapter 84.56 RCW.*

**17.16.080 Statement of expense—Notice of hearing.** An itemized account shall be kept of the expenses of exterminating the rodents on said land and, upon the conclusion of such work, a sworn itemized statement of such expense, together with the description of the land and a return of the service, or mailing and posting, of the notice to the owner, occupant, agent in charge, or lessee shall be filed with the board of county commissioners of the county in which said land is situated. The board shall thereupon fix a time and place when and where such statement of expense will be considered, and shall give notice of same. Said notice shall be signed by the clerk of the board, shall be served in the same manner, by the same agency, and shall be given for the same length of time and to the same parties as the notice provided for in RCW 17.16.070. [1921 c 140 § 9; RRS § 2796.]

**17.16.090 Hearing—Expense to be taxed to land—Limitation.** The board of county commissioners shall meet at the time and place fixed in said notice, and shall examine said statement of expenses, hear testimony if offered, and shall determine that said statement, or so much thereof as is just and correct, shall be established as a tax against the land involved. Said board shall also make an order that the total amount of such expenses so approved shall be a tax on the land on which said work was done after the expiration of ten days from the date of the entry of said order on the minutes of the board, unless sooner paid or unless an appeal be taken as provided in RCW 17.16.110 in which event the same shall become a tax at the time the amount charged shall be determined by the court: *Provided*, That in no case shall the total expense for the extermination of rodents for any one year charged against any tract of land exceed a sum which in the aggregate shall amount to more than twenty cents per acre or fraction thereof included in the tract. [1921 c 140 § 10; RRS § 2797.]

**17.16.100 Entry on tax rolls—Rotating fund.** The county treasurer shall enter the amount of such expense according to the order of the board, on the tax rolls against the land for the current year, and the same shall become a part of the general taxes for that year to be collected at the same time and with the same interest and penalties and when so collected the same shall be credited to the rotating fund herein provided for. [1921 c 140 § 11; RRS § 2798.]

**17.16.110 Appeal.** Any person feeling himself aggrieved at the decision and order of the board of county commissioners approving the amount of such expenses and establishing the same as a tax against the land involved may appeal therefrom to the superior court of the county, by serving a written notice of appeal on the board and by filing a copy of same with proof of service

attached, together with a good and sufficient cost bond to be approved by the county clerk in the sum of two hundred dollars, said cost bond to run to the county and in all other respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice of appeal must be served and filed within ten days from the date of the decision and order of the board approving the amount of said expense and establishing the same as a tax against the land involved, and said appeal must be brought on for hearing upon a certified copy of the records in the matter without further pleadings, at the next term of court thereafter. An appeal from the judgment of the superior court in the matter may be taken to the supreme court or the court of appeals of the state as in other cases on appeal. Upon the final conclusion of any appeal so taken, the county clerk shall certify to the county treasurer the result of such appeal. [1971 c 81 § 57; 1921 c 140 § 12; RRS § 2799.]

*Appeals to supreme court: Rules of court: See Rules On Appeal.*

**17.16.130 Poisons to be labeled.** All poisons and poisoned baits prepared and distributed under authority of the board of county commissioners shall be placed in containers plainly labeled to show the character and purpose of the contents thereof. [1950 ex.s. c 19 § 1; 1921 c 140 § 13; RRS § 2800.]

*"Misbranded" as applicable to pesticides, devices or spray adjuvants: RCW 15.58.130.*

## Chapter 17.21

### WASHINGTON PESTICIDE APPLICATION ACT

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#### 17.21.010 Declaration of police power and purpose.

The application and the control of the use of various pesticides is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be affected with the public interest. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health and welfare of the people of the state. [1967 c 177 § 1; 1961 c 249 § 1.]

*Washington pesticide control act: Chapter 15.58 RCW.*

**17.21.020 Definitions.** For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, or any organized group of persons whether incorporated or not, and every officer, agent or employee thereof. This term shall import either the singular or plural as the case may be.

(4) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(5) "Pesticide" means, but is not limited to, (a) any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to

be a pest, and (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant, and (c) 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.

(6) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests or to destroy, control, repel or mitigate fungi, nematodes or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately therefrom.

(7) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel or mitigate any fungi.

(8) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel or mitigate rodents or any other vertebrate animal which the director may declare to be a pest.

(9) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel or mitigate any weed.

(10) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(11) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(12) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

(13) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(14) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(15) "Weed" means any plant which grows where not wanted.

(16) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(17) "Fungi" means all nonchlorophyll-bearing thalphytes (that is, all nonchlorophyll-bearing plants of a

lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other animals.

(18) "Snails or slugs" include all harmful mollusks.

(19) "Nematode" means any of the nonsegmented roundworms harmful to plants.

(20) "Apparatus" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized handsized household device used to apply any pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(21) "Restricted use pesticide" means any pesticide, including any highly toxic pesticide, which the director has found and determined, subsequent to a hearing, to be injurious to persons, pollinating insects, bees, animals, crops or lands other than the pests it is intended to prevent, destroy, control, or mitigate.

(22) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(23) "Agricultural crop" means a food intended for human consumption, or a food for livestock the products of which are intended for human consumption, which food shall require cultural treatment of the land for its production.

(24) "Board" means the pesticide advisory board.

(25) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation. [1971 ex.s. c 191 § 1; 1967 c 177 § 2; 1961 c 249 § 2.]

**17.21.030 Mandatory, permissive rules—Director to administer and enforce chapter.** The director shall administer and enforce the provisions of this chapter and rules adopted hereunder.

(1) The director shall adopt rules:

(a) Governing the application and use, or prohibiting the use, or possession for use, of any pesticide which the director finds and determines to be injurious;

(b) Governing the time when, and the conditions under which restricted use pesticides shall or shall not be used in different areas, which areas may be prescribed by him, in the state;

(c) Providing that any or all restricted use pesticides shall be purchased, possessed or used only under permit of the director and under his direct supervision in certain areas and/or under certain conditions or in certain quantities of concentrations; however, any person licensed to sell such pesticides may purchase and possess such pesticides without a permit; and

(d) Providing that all permittees shall keep records as required of licensees under RCW 17.21.100.

(2) The director may adopt any other rules necessary to carry out the purpose and provisions of this chapter. [1961 c 249 § 3.]

**17.21.040 Rules subject to administrative procedure act.** All rules adopted under the provisions of this chapter shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning the adoption of rules. [1961 c 249 § 4.]

**17.21.050 Hearings for suspension, denial or revocation of licenses subject to administrative procedure act.** All hearings for the suspension, denial or revocation of a license issued under the provisions of this chapter shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning contested cases. [1961 c 249 § 5.]

**17.21.060 Subpoenas—Witness fees.** The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license or permit issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1961 c 249 § 6.]

**17.21.065 Classification of licenses.** The director may classify licenses to be issued under the provisions of this chapter, such classifications may include but not be limited to pest control operators, ornamental sprayers, agricultural crop sprayers or right of way sprayers; separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides. Each such classification shall be subject to separate testing procedures and requirements: *Provided*, That no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section, except as provided for in RCW 17.21.110. [1967 c 177 § 17.]

**17.21.070 Pesticide applicator's license—Required—Application date—Fee.** It shall be unlawful for any person to engage in the business of applying pesticides to the land of another without a pesticide applicator's license. Application for such a license shall be made on or before January 1st of each year. Such application shall be accompanied by a fee of fifty dollars and in addition thereto a fee of ten dollars for each apparatus, exclusive of one, used by the applicant in the application of pesticides: *Provided*, That the provisions of this section shall not apply to any person employed only to operate any apparatus used for the application of any pesticide, and in which such person has no financial interest or other control over such apparatus other than its day to day mechanical operation for the purpose of applying any pesticide. [1967 c 177 § 3; 1961 c 249 § 7.]

**17.21.080 Application for license—Form, contents.** Application for a pesticide applicator's license provided for in RCW 17.21.070 shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for such license.

(2) If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or any other organized group of persons whether incorporated or not, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation or group.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant.

(5) The model, make, horsepower, and size of any apparatus used by the applicant to apply pesticides.

(6) License classification or classifications the applicant is applying for.

(7) Any other necessary information prescribed by the director. [1967 c 177 § 4; 1961 c 249 § 8.]

**17.21.090 Examination for applicator's license or license renewal—Fee.** The director shall not issue a pesticide applicator's license until the applicant, if he is the sole owner of the business, or if there is more than one owner, the person managing the business, has passed an examination to demonstrate to the director (1) his knowledge of how to apply pesticides under the classifications he has applied for, manually or with the various apparatuses that he may have applied for a license to operate under the provisions of this chapter, and (2) his knowledge of the nature and effect of pesticides he may apply manually or with such apparatuses under such classifications. The director may renew any applicant's license under the classification for which such applicant is licensed, subject to examination for new knowledge that may be required to apply pesticides manually or with apparatuses the applicant has been licensed to operate. The director shall charge an examination fee of five dollars when an examination is necessary before a license may be issued or when application for such license and examination is made at other than a regularly scheduled examination date as provided for by the director. [1971 ex.s. c 191 § 2; 1967 c 177 § 5; 1961 c 249 § 9.]

**17.21.100 Licensees to keep records—Contents—Duration—Submission to director.** Pesticide applicators licensed under the provisions of this chapter shall keep records on a form prescribed by the director which shall include the following:

(1) The name of the person for whom the pesticide was applied.

(2) The location of the land where the pesticide was applied.

(3) The year, month, day and time the pesticide was applied.

(4) The person or firm who supplied the pesticide which was applied.

(5) The trade name and/or the common name of the pesticide which was applied.

(6) The direction and estimated velocity of the wind at the time the pesticide was applied: *Provided*, That this subsection does not apply to applications of baits in bait stations and pesticide applications within structures.

(7) Any other reasonable information required by the director.

(8) Such records shall be kept for a period of three years from the date of the application of the pesticide to which such records refer, and the director shall, upon request in writing, be furnished with a copy of such records forthwith by the licensee: *Provided*, That the director may require the submission of such records within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of such restricted use pesticide. [1971 ex.s. c 191 § 3; 1961 c 249 § 10.]

**17.21.110 Operator's license—Required—Fee—Exception.** It shall be unlawful for any person to act as an employee of a pesticide applicator and apply pesticides manually or as the operator directly in charge of any apparatus which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide, without having obtained an operator's license from the director. Such an operator's license shall be in addition to any other license or permit required by law for the operation or use of any such apparatus. Any person applying for such an operator's license shall file an application on a form prescribed by the director on or before January 1st of each year. Such application shall state the classifications the applicant is applying for and whether the applicant intends to apply pesticides manually or to operate either a ground or aerial apparatus, or both, for the application of pesticides. Application for a license to apply pesticides manually and/or to operate ground apparatuses shall be accompanied by a license fee of ten dollars. Application for a license to operate an aerial apparatus shall be accompanied by a license fee of ten dollars. The provisions of this section shall not apply to any individual who has passed the examination provided for in RCW 17.21.090, and is a licensed pesticide applicator. [1967 c 177 § 6; 1961 c 249 § 11.]

**17.21.120 Examination for operator's license—Fee.** The director shall not issue an operator's license before such applicant has passed an examination to demonstrate to the director (1) his ability to apply pesticides in the classifications he has applied for, manually or with the various apparatuses that he may have applied for a license to operate, and (2) his knowledge of the nature and effect of pesticides applied manually or used in such apparatuses under such classifications. The director may renew any applicant's license under the classification for which such applicant is licensed, subject to examination for new knowledge that may be required to apply pesticides manually or with apparatuses the applicant has been licensed to operate. The director shall charge an examination fee of five dollars when an examination is necessary before a license may be issued and when application for such license and examination

is made at other than a regularly scheduled examination date as provided for by the director. [1967 c 177 § 7; 1961 c 249 § 12.]

**17.21.130 Expiration date of licenses.** Any license provided for in this chapter shall expire on December 31st following issuance unless it has been revoked or suspended prior thereto by the director for cause. [1961 c 249 § 13.]

**17.21.140 Penalty for delinquent renewals.** If the application for renewal of any license provided for in this chapter is not filed prior to January 1st in any year, a penalty of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not acted as a pesticide applicator or operator subsequent to the expiration of his license. [1961 c 249 § 14.]

**17.21.150 Grounds for denial, suspension, revocation of license.** The director may deny, suspend, or revoke a license provided for in this chapter if he determines that an applicant or licensee has committed any of the following acts, each of which is declared to be a violation of this chapter:

- (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
- (2) Applied worthless or improper materials;
- (3) Operated a faulty or unsafe apparatus;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Refused or neglected to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the director;
- (6) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;
- (7) Made false or fraudulent records, invoices, or reports;
- (8) Engaged in the business of applying a pesticide without having a licensed applicator or operator in direct "on-the-job" supervision;
- (9) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus;
- (10) Used fraud or misrepresentation in making an application for a license or renewal of a license;
- (11) Is not qualified to perform the type of pest control under the conditions and in the locality in which he operates or has operated, regardless of whether or not he has previously passed an examination provided for in RCW 17.21.090 and 17.21.120;
- (12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(13) Made false, misleading or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land; or

(14) Impersonated any state, county or city inspector or official. [1971 ex.s. c 191 § 4; 1967 c 177 § 8; 1961 c 249 § 15.]

**17.21.160 Surety bond or insurance required of pesticide applicator licensee.** The director shall not issue a pesticide applicator's license until the applicant has furnished evidence of financial responsibility with the director consisting either of a surety bond; or a liability insurance policy or certification thereof, protecting persons who may suffer legal damages as a result of the operations of the applicant: *Provided*, That such surety bond or liability insurance policy need not apply to damages or injury to agricultural crops, plants or land being worked upon by the applicant. The director shall not accept a surety bond or liability insurance policy except from authorized insurers in this state or if placed as a surplus line as provided for in chapter 48.15 RCW, as enacted or hereafter amended. [1967 c 177 § 9; 1961 c 249 § 16.]

**17.21.170 Amount of bond or insurance required—Notice of reduction or cancellation by surety or insurer.** The amount of the surety bond or liability insurance as provided for in RCW 17.21.160 shall be not less than twenty-five thousand dollars for property damage and public liability insurance, each separately, and including loss or damage arising out of the actual use of any pesticide. Such surety bond or liability insurance shall be maintained at not less than that sum at all times during the licensed period. The director shall be notified ten days prior to any reduction at the request of the applicant or cancellation of such surety bond or liability insurance by the surety or insurer: *Provided*, That the total and aggregate of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy: *Provided, further*, That the director may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding five hundred dollars for aerial applicators and two hundred and fifty dollars for all other applicators for the total amount of liability insurance or surety bond required herein: *And provided further*, That if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim such deductible clause shall not be accepted by the director unless such applicant furnishes the director with a surety bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides. [1967 c 177 § 10; 1963 c 107 § 1; 1961 c 249 § 17.]

**17.21.180 Suspension of license when bond or insurance reduced below minimum requirement.** The applicator's license shall, whenever the licensee's surety bond or insurance policy is reduced below the requirements of RCW 17.21.170, be automatically suspended until such licensee's surety bond or insurance policy again meets the requirements of RCW 17.21.170: *Provided*,

That the director may pick up such licensee's license plates during such period of automatic suspension and return them only at such time as the said licensee has furnished the director with written proof that he is in compliance with the provisions of RCW 17.21.120. [1967 c 177 § 11; 1961 c 249 § 18.]

**17.21.190 Damaged person must file report of loss—Contents—Time for filing—Effect of failure to file.** Any person suffering loss or damage resulting from the use or application by others of any pesticide must file with the director a verified report of loss setting forth, so far as known to the claimant, the following:

- (1) The name and address of the claimant.
- (2) The type, kind, property alleged to be injured or damaged.
- (3) The name of the person applying the pesticide and allegedly responsible.
- (4) The name of the owner or occupant of the property for whom such application of the pesticide was made.

The report must be filed within sixty days from the time that the loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the report must be filed prior to harvest of fifty percent of that crop, unless the loss or damage was not then known.

The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

The failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by a pesticide applicator or operator, the director may refuse to hold a hearing for the denial, suspension, or revocation of such pesticide applicator's or operator's license until such report is filed. [1961 c 249 § 19.]

**17.21.200 Forest landowner or employees, farmer, exemption from licensing.** The provisions of this chapter relating to licenses and requirements for their issuance shall not apply to any forest landowner, or his employees, applying pesticides with ground apparatus or manually, on his own lands or any lands or rights of way under his control or to any farmer owner of ground apparatus applying pesticides for himself or other farmers on an occasional basis not amounting to a principal or regular occupation: *Provided*, That such owner shall not publicly hold himself out as a pesticide applicator. [1971 ex.s. c 191 § 5; 1967 c 177 § 12; 1961 c 249 § 20.]

**17.21.203 Government research personnel, persons engaged in research projects, exemption from licensing.** The licensing provisions of this chapter shall not apply to research personnel of federal, state, county, or municipal agencies when performing pesticide research in

their official capacities; and to other persons when applying pesticides to small experimental plots for research projects conducted in cooperation with governmental research agencies. [1971 ex.s. c 191 § 9.]

**17.21.205 Landscape gardener exemption from licensing.** The licensing provisions of chapter 17.21 RCW shall not apply to any person using hand-powered equipment, devices, or contrivances to apply pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve feet high, as an incidental part of his business of taking care of household lawns and yards for remuneration: *Provided*, That such person shall not publicly hold himself out as being in the business of applying pesticides. [1971 ex.s. c 191 § 6; 1967 c 177 § 18.]

**17.21.220 Application of chapter to governmental entities—Public operator's license required—Liability.** (1) All state agencies, municipal corporations, and public utilities or any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application of pesticides: *Provided*, That the operators in charge of any apparatuses used by any state agencies, municipal corporations and public utilities or any governmental agencies shall be subject to the provisions of RCW 17.21.100, 17.21.110 and 17.21.120 and the director shall issue a limited public operator license without a fee to such operators which shall be valid only when such operators are acting as operators on apparatuses used by such entities: *Provided further*, That the jurisdictional health officer or his duly authorized representative is exempt from this licensing provision when applying pesticides to control pests other than weeds.

(2) Such agencies, municipal corporations and public utilities shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred. [1971 ex.s. c 191 § 7; 1967 c 177 § 13; 1961 c 249 § 22.]

**17.21.230 Agricultural pesticide advisory board—Composition, terms.** There is hereby created a pesticide advisory board consisting of three licensed pesticide applicators residing in the state (one shall be licensed to operate ground apparatus, one shall be licensed to operate aerial apparatus, and one shall be licensed for structural pest control), one licensed pest control consultant, one licensed pesticide dealer manager, one entomologist in public service, one toxicologist in public service, one plant pathologist in public service, one member from the agricultural chemical industry, one member from the food processing industry, and two producers of agricultural crops or products on which pesticides are applied or which may be affected by the application of pesticides. Such members shall be appointed by the governor for terms of four years and may be appointed for successive four year terms at the discretion of the governor. The governor may remove any member of the board prior to the expiration of his



term of appointment for cause. The board shall also include the director of the department of labor and industries or his duly authorized representative, the environmental health specialist from the division of health of the department of social and health services, the supervisor of the grain and chemical division of the department, and the directors, or their appointed representatives, of the departments of game, fisheries, natural resources, and ecology. [1974 1st ex.s. c 20 § 1; 1971 ex.s. c 191 § 8; 1967 c 177 § 14; 1961 c 249 § 23.]

**17.21.240 Agricultural pesticide advisory board—Vacancies.** Upon the death, resignation or removal for cause of any member of the board, the governor shall fill such vacancy, within thirty days of its creation, for the remainder of its term in the manner herein prescribed for appointment to the board. [1961 c 249 § 24.]

**17.21.250 Agricultural pesticide advisory board—General powers and duties.** The board shall advise the director on any or all problems relating to the use and application of pesticides in the state. [1961 c 249 § 25.]

**17.21.260 Agricultural pesticide advisory board—Officers, meetings.** The board shall elect one of its members chairman. The members of the board shall meet at such time and at such place as shall be specified by the call of the director, chairman or a majority of the board. [1961 c 249 § 26.]

**17.21.270 Agricultural pesticide advisory board—Board to receive traveling expenses and per diem.** No person appointed to the board shall receive a salary or other compensation as a member of the board: *Provided*, That each member of the board shall receive traveling expenses and per diem as prescribed by law for state employees for each day spent in actual attendance at or traveling to and from meetings of the board or special assignments for the board. [1961 c 249 § 27.]

**17.21.280 Moneys collected solely for enforcement of chapter—Collections under prior law—Remittance of justice court fees, fines, penalties and forfeitures.** All moneys collected under the provisions of this chapter shall be paid to the director for use exclusively in the enforcement of this chapter. All moneys held by the director for the enforcement of chapter 17.20 RCW shall be retained by him for the enforcement of this chapter: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 15; 1961 c 249 § 28.]

**17.21.290 License plates for apparatuses—Statement of classification to appear on apparatus.** All licensed apparatuses shall be identified by a license plate furnished by the director, at no cost to the licensee, which plate shall be affixed in a location and manner upon such apparatus as prescribed by the director. The licensee shall also place on two sides of each licensed

apparatus so as to be readily visible to the public, letters not less than one inch high stating the classification or classifications for which such licensee is licensed. [1967 c 177 § 15; 1961 c 249 § 29.]

**17.21.300 Agreements with other governmental entities.** The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation. [1961 c 249 § 30.]

**17.21.305 Licensing by cities of first class and counties not precluded.** The provisions of this chapter requiring all pest control operators, exterminators and fumigators to license with the department shall not preclude a city of the first class with a population of one hundred thousand people or more, or the county in which it is situated, from also licensing structural pest control operators, exterminators and fumigators operating within the territorial confines of said city or county: *Provided*, That when structural pest control operators, exterminators and fumigators are licensed by both such city of the first class and the county in which such city is situated, and there exists a joint county-city health department, then such joint county-city health department may enforce the provisions of such city and county as to the license requirements for said structural pest control operators, exterminators and fumigators. [1967 c 177 § 19.]

**17.21.310 General penalty.** Any person who shall violate any provisions or requirements of this chapter or rules adopted hereunder shall be deemed guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent offense: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1967 c 177 § 16; 1961 c 249 § 34.]

**17.21.320 Access to public or private premises—Search warrant, when—Prosecuting attorney's duties—Injunctions, when.** (1) For purpose of carrying out the provisions of this chapter the director may enter upon any public or private premises at reasonable times, in order:

(a) To have access for the purpose of inspecting any equipment subject to this chapter and such premises on which such equipment is kept or stored;

(b) To inspect lands actually or reported to be exposed to pesticides;

(c) To inspect storage or disposal areas;

(d) To inspect or investigate complaints of injury to humans or land; or

(e) To sample pesticides being applied or to be applied.

(2) Should the director be denied access to any land where such access was sought for the purposes set forth in this chapter, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such

application, issue the search warrant for the purposes requested.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(4) The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in the superior court of the county in which such violation occurs or is about to occur. [1971 ex.s. c 191 § 10.]

**17.21.900 Preexisting liabilities not affected.** The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this act becomes effective. [1961 c 249 § 31.]

**17.21.910 Prior licenses continued in force—Costs.** Any license issued under the provisions of chapter 17.20 RCW and in effect on the effective date of this act, shall continue in full force and effect until its expiration date as if it had been issued under the requirements of RCW 17.21.090 and satisfied all requirements for obtaining such license, unless revoked prior thereto for cause by the director subsequent to a hearing.

The director shall prorate the cost of any license provided for in this chapter for the license period beginning with the effective date of this act and ending December 31, 1961. [1961 c 249 § 32.]

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

**17.21.920 Short title.** This chapter may be cited as the Washington pesticide application act. [1961 c 249 § 33.]

**17.21.930 Severability—1961 c 249.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 249 § 35.]

**17.21.931 Severability—1967 c 177.** If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1967 c 177 § 20.]

## Chapter 17.24 INSECT PESTS AND PLANT DISEASES

### Sections

- Pest and disease control—1927 act
- 17.24.030 Power to adopt quarantine measures—Approval by the governor.
- 17.24.035 Director's duty to inspect for pests and diseases.
- 17.24.060 Marking containers of imported products.
- 17.24.070 Infected products in transit in sealed containers.

- 17.24.080 Inspection of imported products—Notice to inspector—Holding for inspection.
- 17.24.100 Penalties—Second and subsequent offenses.

- Pest and disease control—1947 act
- 17.24.105 Authority to apply quarantine control methods.
- 17.24.110 Director's cooperation with other agencies.
- 17.24.120 Acquisition of lands, water supplies, and other property, for quarantine farms.
- 17.24.130 Fees for services.
- 17.24.140 Funds for technical and scientific services.

*Horticultural pests and diseases: Chapter 15.08 RCW.*

### PEST AND DISEASE CONTROL—1927 ACT

**17.24.030 Power to adopt quarantine measures—Approval by the governor.** The director of agriculture by and with the approval of the governor may after investigation establish, maintain and enforce such obligatory quarantine regulations as may be deemed necessary to protect the forest, agricultural, horticultural, ornamental and floral trees, shrubs and plants, and the products thereof in the state of Washington, against contagion or infestation by injurious plant disease insects, or animal or weed pests, by establishing such quarantine at the boundaries of this state or elsewhere within the state, and he may make and enforce, any and all such obligatory rules and regulations as may be deemed necessary to prevent any infected or infested forest, agricultural, horticultural, ornamental and floral trees, shrubs, and plants, and the products thereof in the state of Washington from passing over any quarantine line established and proclaimed pursuant to RCW 17.24.020 through 17.24.100, and all such articles shall, during the maintenance of such quarantine, be inspected by such director or by horticultural or other inspectors thereto appointed, and he and the inspectors so conducting such inspection shall not permit any such article to pass over such quarantine line during such quarantine, except upon a certificate of inspection, signed by such director or in his name by such inspector who has made such inspection. All approvals by the governor given or made pursuant to RCW 17.24.020 through 17.24.100 shall be in writing and signed by the governor in duplicate, and one copy thereof shall be filed in the office of the secretary of state and the other in the office of said director before such approval shall take effect. [1927 c 292 § 2; RRS § 2781. Prior: 1921 c 105 § 2. FORMER PART OF SECTION: 1947 c 156 § 1; Rem. Supp. 1947 § 2809-1, now codified in RCW 17.24.105. Formerly RCW 17.24.030 and 17.24.040, part.]

**Purpose—1927 c 292:** "The forest, agricultural, horticultural, ornamental and floral trees, shrubs, and plants in the state of Washington, and the products thereof shall be preserved and protected from the ravages of diseases, insects, and animal and weed pests injurious thereto and destructive thereof." [1927 c 292 § 1.] This applies to RCW 17.24.020-17.24.100.

**Construction—1927 c 292:** "This act shall not be construed as repealing or limiting any of the provisions of existing laws relating to the establishment and enforcement of quarantines within the state, but shall be deemed to be supplemental thereto." [1927 c 292 § 8.] This applies to RCW 17.24.020-17.24.100.

*Horticultural plants and facilities—Inspection and licensing: Chapter 15.13 RCW.*

*Standards, grades and packs: Chapter 15.17 RCW.*

**17.24.035 Director's duty to inspect for pests and diseases.** Upon information received by such director of the existence of any infectious plant disease, insect or other animal or weed pest, dangerous to any plant or commodity or to the interests of the plant industry of this state, or that there is a probability of the introduction of any such infectious plant disease, insect or other animal or weed pests into this state or across the boundaries thereof, he shall proceed to thoroughly investigate same and may establish, maintain and enforce quarantine as hereinbefore provided, and may make and enforce such regulations as are in his opinion, necessary to circumscribe and exterminate such infectious plant diseases, insect or other animal or weed pests and prevent the spread thereof. Such director may disinfect, or take such other action with reference to any trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit-pits, fruit, seeds, vegetables or any crops or crop products, and any containers thereof, and any packing material used therewith infested or infected with, or which, in his opinion may have been exposed to infection or infestation by, any such infectious plant diseases, insect or other animal or weed pests, as in his discretion shall seem necessary to carry out and give effect to the provisions of RCW 17.24.020 through 17.24.100. Such director, his deputies and inspectors are hereby authorized to enter upon any ground or premises to inspect the same or to inspect any tree, shrub, plant, vine, cutting, graft, scion, bud, fruit-pit, fruit, seed, vegetable, or other article of horticulture or implement thereof or box or package or packing material pertaining thereto, or connected therewith or that has been used in packing, shipping or handling the same, and to open any such package, and generally to do, with the least injury possible under the conditions to property or business all acts and things necessary to carry out the provisions of RCW 17.24.020 through 17.24.100. The said director shall at once notify the governor of all quarantine lines established under or pursuant to RCW 17.24.020 through 17.24.100, and if the governor approve or shall have approved of the same or any portion thereof, the same shall be in effect and the governor may issue his proclamation proclaiming the boundaries of such quarantine and the nature thereof, and the order, rules or regulations prescribed for the maintenance and enforcement of the same, and may publish said proclamation in such manner as he may deem expedient to give proper notice thereof.

All orders, rules and regulations issued by the director of agriculture pursuant to RCW 17.24.020 through 17.24.100 shall have the force and effect of law. [1927 c 292 § 3; RRS § 2782. Prior: 1921 c 105 § 3. Formerly RCW 17.24.020, 17.24.040, part, and 17.24.050.]

**17.24.060 Marking containers of imported products.** Each carload, case, box, package, crate, bale or bundle of trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit pits, or fruit or vegetables or seed, imported or brought into this state, shall have plainly and legibly marked thereon in a conspicuous manner and place the name and address of the shipper, owner or owners or person forwarding or shipping the same, and also the

name of the person, firm, or corporation to whom the same is forwarded or shipped, or his or its responsible agents, also the name of the country, state or territory where the contents were grown, and a statement of the contents therein. [1927 c 292 § 4; RRS § 2783. Prior: 1921 c 105 § 4.]

**17.24.070 Infected products in transit in sealed containers.** When any shipment of nursery stock, trees, vines, plants, shrubs, cuttings, grafts, scions, fruit, fruit pits, vegetables, or seed, or any other horticultural or agricultural products passing through any portion of the state of Washington in transit, is infested or infected with any species of injurious insects, their eggs, larvae, pupae or animal or plant disease, or weed pest, which would cause damage, or be liable to cause damage to the forests, orchards, vineyards, gardens, or farms of the state of Washington, or which would be, or liable to be, detrimental thereto or to any portion of said state, or to any of the forests, orchards, vineyards, gardens or farms within said state, and there exists danger of dissemination of such insects or disease or weed pest while such shipment is in transit in the state of Washington, then such shipment shall be placed within sealed containers, composed of metallic or other material, so that the same cannot be broken or opened, or be liable to be broken, or opened, so as to permit any of the said shipment, insects, their eggs, larvae, or pupae or animal or plant disease to escape from such sealed containers and the said containers shall not be opened while within the state of Washington. [1927 c 292 § 5; RRS § 2784. Prior: 1921 c 105 § 5.]

**17.24.080 Inspection of imported products—Notice to inspector—Holding for inspection.** Whenever the director of agriculture declares, promulgates and issues quarantine measures, orders or regulations against any part or portion of this state or any other state or country or section thereof, for the protection of any forest, agricultural, horticultural, ornamental or floral trees, shrubs, or plants, and there shall be received in this state, any forest, agricultural, horticultural, ornamental or floral trees, shrubs, or plants, or the raw products thereof, from any part or portion of this state, or any other state or country or section thereof, against which the quarantine has been issued as to such commodity, it shall be the duty of the person, or the official of the carrier having such shipment in charge for delivery, unless the same is accompanied by a certificate of inspection and approval by a horticultural inspector of this state, showing that the same was inspected and approved at the initial point of shipment, to notify the horticultural inspector stationed nearest to the point where said shipment is received, of the receipt of such shipment giving the name of the consignor and consignee and stating that such shipment is ready for inspection and delivery. Said notification shall be either by telephone or telegraph, and confirmed by written notice delivered personally to said inspector or to some person of suitable age and discretion at his residence or office, or by mail addressed to said inspector at his

place of residence or at his office; and it shall be unlawful for any such agent or person having such shipment in charge to deliver the same to the consignee or to any other person until the same shall have been inspected by a horticultural inspector: *Provided, however*, That such agent shall not be required to hold such shipment more than forty-eight hours after notifying the inspector as aforesaid, except in case the notice is given by mail, in which event, such shipment shall be held for such period beyond said forty-eight hours as is ordinarily required for delivery of mail to the address of the inspector. Upon the delivery to the consignee of a shipment accompanied by a certificate of inspection as aforesaid, the agent or person making the delivery shall retain the certificate of inspection showing his authority for releasing the same. [1927 c 292 § 6; RRS § 2785. Prior: 1921 c 105 § 6, part. Formerly RCW 17.24.080 and 17.24.090.]

**17.24.100 Penalties—Second and subsequent offenses.** Every person who shall violate or fail to comply with any rule or regulation adopted and promulgated by the director of agriculture in accordance with and under the provision of RCW 17.24.020 through 17.24.100 shall be guilty of a misdemeanor, and for a second and each subsequent violation or failure to comply with the same rule or regulation, shall be punished by imprisonment in the county jail for not less than thirty days or more than one year, or by a fine of not less than one hundred dollars, or more than one thousand dollars or both such fine and imprisonment. [1927 c 292 § 7; RRS § 2786. Prior: 1921 c 105 § 7.]

#### PEST AND DISEASE CONTROL—1947 ACT

**17.24.105 Authority to apply quarantine control methods.** The director of agriculture of the state of Washington, and the supervisor of horticulture of the department of agriculture of the state of Washington, are authorized and empowered to apply such quarantine control methods as may be necessary to prevent the introduction of insect pests or plant diseases, including the virus disease known as potato leaf roll that may be destructive to the agricultural or horticultural industries of the state of Washington, and to apply such methods as may be necessary for quarantine, and/or eradication, and/or control of insect pests or plant diseases that are now established or later become established in the state of Washington that may seriously endanger the agricultural or horticultural industries of the state of Washington. [1947 c 156 § 1; Rem. Supp. 1947 § 2809-1. Prior: 1945 c 9 § 1; 1941 c 11 § 1. Formerly RCW 17.24.030, part.]

**17.24.110 Director's cooperation with other agencies.** The director of agriculture and the supervisor of horticulture are authorized to cooperate with any individual, group of citizens, municipalities and counties of the state of Washington, the state college of Washington or any of its experiment stations, and/or with the secretary of agriculture of the United States and such agencies as the secretary may designate, and/or with any other

state or states, agency or group the director of agriculture may designate, to carry out the provisions of RCW 17.24.105 through 17.24.140. [1947 c 156 § 2; Rem. Supp. 1947 § 2809-2. Prior: 1945 c 9 § 2.]

**17.24.120 Acquisition of lands, water supplies, and other property, for quarantine farms.** The director of agriculture shall have the power and authority to acquire in fee or in trust, by gift, or, whenever funds are appropriated for such purpose, by purchase, easement, lease or condemnation, such lands or other property, water supplies, and rights of way therefor, and the maintenance of same, as may be deemed necessary for the use of the department of agriculture in establishing quarantine stations, and/or farms for the purpose of the prevention, eradication, elimination and control of insect pests or plant diseases that infect the agricultural or horticultural products of the state of Washington. [1947 c 156 § 3; Rem. Supp. 1947 § 2809-3. Prior: 1945 c 9 § 3.]

**17.24.130 Fees for services.** The director of agriculture is authorized to enter into agreements with individuals, associations and companies for the purpose of certifying nursery stock grown under the rules and regulations promulgated by the director of agriculture and, from time to time, to fix, change and adjust fees for such services rendered, and any agricultural and horticultural commodities incidentally produced in any operation hereunder and sold, said fees to be deposited with the state treasurer to the credit of the general fund. All actions of the director of agriculture and/or the department of agriculture in accepting deeds from any individual or group of individuals for any of the purposes heretofore specifically enumerated are, from the date of the acceptance of such deed, hereby ratified and validated. [1947 c 156 § 4; Rem. Supp. 1947 § 2809-4. Prior: 1945 c 9 § 4.]

**17.24.140 Funds for technical and scientific services.** The director of agriculture, acting by and through the supervisor of horticulture of the state of Washington, may, in his discretion, provide funds for technical or scientific services, labor, materials and supplies for the purposes specified in RCW 17.24.105 through 17.24.130. [1947 c 156 § 5; Rem. Supp. 1947 § 2809-5. Prior: 1945 c 9 § 5.]

#### Chapter 17.28

#### MOSQUITO CONTROL DISTRICTS

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- 17.28.900 Severability—1957 c 153.

**17.28.010 Definitions.** When used in this chapter, the following terms, words or phrases shall have the following meaning:

(1) "District" means any mosquito control district formed pursuant to this chapter.

(2) "Board" or "district board" means the board of trustees governing the district.

(3) "County commissioners" means the governing body of the county.

(4) "Unit" means all unincorporated territory in a proposed district in one county, regarded as an entity, or each city in a proposed district, likewise regarded as an entity.

(5) "Territory" means any city or county or portion of either or both city or county having a population of not less than one hundred persons.

(6) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof. [1957 c 153 § 1.]

**17.28.020 Districts may be organized in counties—Petition, presentment, signatures.** Any number of units of a territory within the state of Washington in Adams, Benton, Franklin, Grant, Kittitas, Walla Walla and Yakima counties or any other county may be organized as a mosquito control district under the provisions of this chapter.

A petition to form a district may consist of any number of separate instruments which shall be presented at a regular meeting of the county commissioners of the county in which the greater area of the proposed district is located. Petitions shall be signed by registered voters of each unit of the proposed district, equal in number to not less than ten percent of the votes cast in each unit respectively for the office of governor at the last gubernatorial election prior to the time of presenting the petition. [1969 c 96 § 1; 1957 c 153 § 2.]

**17.28.030 Petition method—Description of boundaries—Verification of signatures—Resolution to include city.** Before a city can be included as a part of the proposed district its governing body shall have requested that the city be included by resolution, duly authenticated.

The petition shall set forth and describe the boundaries of the proposed district and it shall request that it be organized as a mosquito control district. Upon receipt of such a petition, the auditor of the county in which the greater area of the proposed district is located shall be charged with the responsibility of examining the same and certifying to the sufficiency of the signatures thereon. For the purpose of examining the signatures on such petitions, the auditor shall be permitted access to the voters' registration books of each city and county located in the proposed district and may appoint the respective county auditors and city clerks thereof as his deputies. No person may withdraw his name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the board of commissioners of the county in which the greater area of the proposed district is located, together with his certificate as to the sufficiency thereof. [1957 c 153 § 3.]

**17.28.040 Petition method—Publication of petition and notice of meeting.** Upon receipt of a duly certified petition, the board of commissioners shall cause the text of the petition to be published once a week for at least three consecutive weeks in one or more newspapers of general circulation within the county where the petition is presented and at each city a portion of which is included in the proposed district. If any portion of the proposed district lies in another county, the petition and notice shall be likewise published in that county.

Only one copy of the petition need be published even though the district embraces more than one unit. No more than five of the names attached to the petition need appear in the publication of the petition and notice, but the number of signers shall be stated.

With the publication of the petition there shall be published a notice of the time of the meeting of the

county commissioners when the petition will be considered, stating that all persons interested may appear and be heard. [1957 c 153 § 4.]

**17.28.050 Resolution method.** Such districts may also be organized upon the adoption by the county commissioners of a resolution of intention so to do, in lieu of the procedure hereinbefore provided for the presentation of petitions. In the event the county commissioners adopt a resolution of intention, such resolution shall describe the boundaries of the proposed district and shall set a time and place at which they will consider the organization of the district, and shall state that all persons interested may appear and be heard. Such resolution of intention shall be published in the same manner and for the same length of time as a petition. [1957 c 153 § 5.]

**17.28.060 Hearing—Defective petition—Establishment of boundaries.** At the time stated in the notice of the filing of the petition or the time mentioned in the resolution of intention, the county commissioners shall consider the organization of the district and hear those appearing and all protests and objections to it. The commissioners may adjourn the hearing from time to time, not exceeding two months in all.

No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures thereto, shall vitiate any proceedings if the petition has a sufficient number of qualified signatures.

On the final hearing the county commissioners shall make such changes in the proposed boundaries as are advisable, and shall define and establish the boundaries. [1957 c 153 § 6.]

**17.28.070 Procedure to include other territory.** If the county commissioners deem it proper to include any territory not proposed for inclusion within the proposed boundaries, they shall first cause notice of intention to do so to be mailed to each owner of land in the territory whose name appears as owner on the last completed assessment roll of the county in which the territory lies, addressed to the owner at his address given on the assessment roll, or if no address is given, to his last known address; or if it is not known, at the county seat of the county in which his land lies. The notice shall describe the territory and shall fix a time, not less than two weeks from the date of mailing, when all persons interested may appear before the county commissioners and be heard.

The boundaries of a district lying in a city shall not be altered unless the governing board of the city, by resolution, consents to the alteration. [1957 c 153 § 7.]

**17.28.080 Determination of public necessity and compliance with chapter.** Upon the hearing of the petition the county commissioners shall determine whether the public necessity or welfare of the proposed territory and of its inhabitants requires the formation of the district, and shall also determine whether the petition complies with the provisions of this chapter, and for

that purpose shall hear all competent and relevant testimony offered. [1957 c 153 § 8.]

**17.28.090 Declaration establishing and naming district—Election to form district—Establishment of district.** If, from the testimony given before the county commissioners, it appears to that board that the public necessity or welfare requires the formation of the district, it shall, by an order entered on its minutes, declare that to be its finding, and shall further declare and order that the territory within the boundaries so fixed and determined be organized as a district, under an appropriate name to be selected by the county commissioners, subject to approval of the voters of the district as hereinafter provided. The name shall contain the words "mosquito control district."

At the time of the declaration establishing and naming the district, the county commissioners shall by resolution call a special election to be held not less than thirty days and not more than sixty days from the date thereof, and shall cause to be published a notice of such election at least once a week for three consecutive weeks in a newspaper of general circulation in the county, setting forth the hours during which the polls will be open, the boundaries of the proposed district as finally adopted, and the object of the election. If any portion of the proposed district lies in another county, a notice of such election shall likewise be published in that county.

The election on the formation of the mosquito control district shall be conducted by the auditor of the county in which the greater area of the proposed district is located in accordance with the general election laws of the state and the results thereof shall be canvassed by that county's canvassing board. For the purpose of conducting an election under this section, the auditor of the county in which the greater area of the proposed district is located may appoint the auditor of any county or the city clerk of any city lying wholly or partially within the proposed district as his deputies. No person shall be entitled to vote at such election unless he is a qualified voter under the laws of the state in effect at the time of such election and has resided within the mosquito control district for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"Shall a mosquito control district be established for the area described in a resolution of the board of commissioners of \_\_\_\_\_ county adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_?"

YES . . . . .   
NO . . . . .

If a majority of the persons voting on the proposition shall vote in favor thereof, the mosquito control district shall thereupon be established and the county commissioners of the county in which the greater area of the district is situated shall immediately file for record in the office of the county auditor of each county in which any portion of the land embraced in the district is situated, and shall also forward to the county commissioners of each of the other counties, if any, in which any



portion of the district is situated, and also shall file with the secretary of state, a certified copy of the order of the county commissioners. From and after the date of the filing of the certified copy with the secretary of state, the district named therein is organized as a district, with all the rights, privileges, and powers set forth in this chapter, or necessarily incident thereto.

If a majority of the persons voting on the proposition shall vote in favor thereof, all expenses of the election shall be paid by the mosquito control district when organized. If the proposition fails to receive a majority of votes in favor, the expenses of the election shall be borne by the respective counties in which the district is located in proportion to the number of votes cast in said counties. [1957 c 153 § 9.]

**17.28.100 Election on proposition to levy tax.** At the same election there shall be submitted to the voters residing within the district, for their approval or rejection, a proposition authorizing the mosquito control district, if formed, to levy at the earliest time permitted by law on all taxable property located within the mosquito control district a general tax, for one year, of twenty-five cents per thousand dollars of assessed value in excess of any constitutional or statutory limitation for authorized purposes of the mosquito control district. The proposition shall be expressed on the ballots in substantially the following form:

"ONE YEAR TWENTY-FIVE CENTS PER THOUSAND DOLLARS OF ASSESSED VALUE LEVY

"Shall the mosquito control district, if formed, levy a general tax of twenty-five cents per thousand dollars of assessed value for one year upon all the taxable property within said district in excess of the constitutional and/or statutory tax limits for authorized purposes of the district?

YES .....   
NO .....

Such proposition to be effective must be approved by a majority of at least three-fifths of the persons voting on the proposition to levy such tax in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. [1973 1st ex.s c 195 § 2; 1957 c 153 § 10.]

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

**17.28.110 Board of trustees—Composition.** Within thirty days after the filing with the secretary of state of the certified copy of the order of formation, a governing board of trustees for the district shall be appointed. The district board shall be appointed as follows:

- (1) If the district is situated in one county only and consists wholly of unincorporated territory, five members shall be appointed by the county commissioners of the county.
- (2) If the district is situated entirely in one county and includes both incorporated and unincorporated

territory one member shall be appointed from each commissioner district lying wholly or partly within the district by the county commissioners of the county, and one member from each city, the whole or part of which is situated in the district, by the governing body of the city; but if the district board created consists of less than five members, the county commissioners shall appoint from the district at large enough additional members to make a board of five members.

(3) If the district is situated in two or more counties and is comprised wholly of incorporated territory, one member shall be appointed from each commissioner district of each county or portion of a county situated in the district by the county commissioners; but if the district board created consists of less than five members, the county commissioners of the county in which the greater area of the district is situated shall appoint from the district at large enough additional members to make a board of five members.

(4) If the district is situated in two or more counties and consists of both incorporated and unincorporated territory, one member shall be appointed by the county commissioners of each of the counties from that portion of the district lying within each commissioner district within its jurisdiction; and one member from each city, a portion of which is situated in the district by the governing body of the city; but if the board created consists of less than five members, the county commissioners in which the greater area of the district is situated shall appoint from the district at large enough additional members to make a board of five members. [1959 c 64 § 1; 1957 c 153 § 11.]

**17.28.120 Board of trustees—Name of board—Qualification of members.** The district board shall be called "The board of trustees of ----- mosquito control district."

Each member of the board appointed by the governing body of a city shall be an elector of the city from which he is appointed and a resident of that portion of the city which is in the district.

Each member appointed from a county or portion of a county shall be an elector of the county and a resident of that portion of the county which is in the district.

Each member appointed at large shall be an elector of the district. [1957 c 153 § 12.]

**17.28.130 Board of trustees—Terms—Vacancies.** The members of the first board in any district shall classify themselves by lot at their first meeting so that:

- (1) If the total membership is an even number, the terms of one-half the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.
- (2) If the total membership is an odd number, the terms of a bare majority of the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.



The term of each subsequent member is two years from and after the expiration of the term of his predecessor.

In event of the resignation, death, or disability of any member, his successor shall be appointed by the governing body which appointed him. [1957 c 153 § 13.]

**17.28.140 Board of trustees—Organization—Officers—Compensation—Expenses.** The members of the first district board shall meet on the first Monday subsequent to thirty days after the filing with the secretary of state of the certificate of incorporation of the district. They shall organize by the election of one of their members as president and one as secretary.

The members of the district board shall serve without compensation; but the necessary expenses of each member for actual traveling in connection with meetings or business of the board may be allowed and paid.

The secretary shall receive such compensation as shall be fixed by the district board. [1957 c 153 § 14.]

**17.28.150 Board of trustees—Meetings—Rules—Quorum.** The district board shall provide for the time and place of holding its regular meetings, and the manner of calling them, and shall establish rules for its proceedings.

Special meetings may be called by three members, notice of which shall be given to each member at least twenty-four hours before the meeting.

All of its sessions, whether regular or special, shall be open to the public.

A majority of the members shall constitute a quorum for the transaction of business. [1957 c 153 § 15.]

**17.28.160 Powers of district.** A mosquito control district organized under this chapter may:

(1) Take all necessary or proper steps for the extermination of mosquitoes.

(2) Subject to the paramount control of the county or city in which they exist, abate as nuisances all stagnant pools of water and other breeding places for mosquitoes.

(3) If necessary or proper, in the furtherance of the objects of this chapter, build, construct, repair, and maintain necessary dikes, levees, cuts, canals, or ditches upon any land, and acquire by purchase, condemnation, or by other lawful means, in the name of the district, any lands, rights of way, easements, property, or material necessary for any of those purposes.

(4) Make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the use or taking of property for dikes, levees, cuts, canals, or ditches.

(5) Enter upon without hindrance any lands within the district for the purpose of inspection to ascertain whether breeding places of mosquitoes exist upon such lands; or to abate public nuisances in accordance with this chapter; or to ascertain if notices to abate the breeding of mosquitoes upon such lands have been complied with; or to treat with oil or other larvicidal material any breeding places of mosquitoes upon such lands.

(6) Sell or lease any land, rights of way, easements, property or material acquired by the district.

(7) Issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board not to exceed five percent per year payable annually or semiannually as the board may prescribe.

(8) Make contracts with the United States, or any state, municipality, or any department of those entities for carrying out the general purpose for which the district is formed.

(9) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for its purposes.

(10) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants; and publish information or literature and do any and all other things necessary or incident to the powers granted by, and to carry out the projects specified in this chapter. [1957 c 153 § 16.]

**17.28.170 Mosquito breeding places declared public nuisance—Abatement.** Any breeding place for mosquitoes which exists by reason of any use made of the land on which it is found or of any artificial change in its natural condition is a public nuisance: *Provided*, That conditions or usage of land which are beyond the control of the landowner or are not contrary to normal, accepted practices of water usage in the district, shall not be considered a public nuisance.

The nuisance may be abated in any action or proceeding, or by any remedy provided by law. [1959 c 64 § 2; 1957 c 153 § 17.]

**17.28.250 Interference with entry or work of district—Penalty.** Any person who obstructs, hinders, or interferes with the entry upon any land within the district of any officer or employee of the district in the performance of his duty, and any person who obstructs, interferes with, molests, or damages any work performed by the district, is guilty of a misdemeanor. [1957 c 153 § 25.]

**17.28.251 Borrowing money or issuing warrants in anticipation of revenue.** A mosquito control district may, prior to the receipt of taxes raised by levy, borrow money or issue warrants of the district in anticipation of revenue, and such warrants shall be redeemed from the first money available from such taxes. [1959 c 64 § 3.]

**17.28.252 Excess levy authorized.** A mosquito control district shall have the power to levy additional taxes in excess of the constitutional and/or statutory limitations for any of the authorized purposes of such district, not in excess of fifty cents per thousand dollars of assessed value per year when authorized so to do by the electors of such district by a three-fifths majority of those voting on the proposition in the manner set forth in Article VII, section 2(a) of the Constitution of this

state, as amended by Amendment 59 and as thereafter amended at such time as may be fixed by the board of trustees for the district, which special election may be called by the board of trustees of the district, at which special election the proposition of authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "Yes" and those opposing thereto to vote "No". Nothing herein shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. [1973 1st ex.s. c 195 § 3; 1959 c 64 § 4.]

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

**17.28.253 District boundaries for tax purposes.** For the purpose of property taxation and the levying of property taxes the boundaries of the mosquito control district shall be the established official boundary of such district existing on the first day of September of the year in which the levy is made, and no such levy shall be made for any mosquito control district whose boundaries are not duly established on the first day of September of such year. [1959 c 64 § 5.]

**17.28.254 Abatement, extermination declared necessity and benefit to land.** It is hereby declared that whenever the public necessity or welfare has required the formation of a mosquito control district, the abatement or extermination of mosquitoes within the district is of direct, economic benefit to the land located within such district and is necessary for the protection of the public health, safety and welfare of those residing therein. [1959 c 64 § 6.]

**17.28.255 Classification of property—Assessments.** The board of trustees shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall apportion and assess the several lots, blocks, tracts, and parcels of land or other property within the district, which assessment shall be collected with the general taxes of the county or counties. [1959 c 64 § 7.]

**17.28.256 Assessments—Roll, hearings, notices, objections, appeal, etc.** The board of trustees in assessing the property within the district and the rights, duties and liabilities of property owners therein shall be governed, insofar as is consistent with this chapter, by the provisions for county road improvement districts as set forth in RCW 36.88.090 through 36.88.110. [1959 c 64 § 8.]

**17.28.257 Assessments—Payment, lien, delinquencies, foreclosure, etc.** The provisions of RCW 36.88.120, 36.88.140, 36.88.150, 36.88.170 and 36.88.180 governing the liens, collection, payment of assessments, delinquent assessments, interest and penalties, lien foreclosure and

foreclosed property of county road improvement districts shall govern such matters as applied to mosquito control districts. [1959 c 64 § 9.]

**17.28.258 County treasurer—Duties.** The county treasurer shall collect all mosquito control district assessments, and the duties and responsibilities herein imposed upon him shall be among the duties and responsibilities of his office for which his bond is given as county treasurer. The collection and disposition of revenue from such assessments and the depositary thereof shall be the same as for tax revenues of such districts as provided in RCW 17.28.270. [1959 c 64 § 10.]

**17.28.260 General obligation bonds.** A mosquito control district shall have the power to issue general obligation bonds and to pledge the full faith and credit of the district to the payment thereof, for any authorized purpose or purposes of the mosquito control district: *Provided*, That a proposition authorizing the issuance of such bonds shall have been submitted to the electors of the mosquito control district at a special or general election and assented to by three-fifths of the persons voting on said proposition at said election at which such election the total number of persons voting on such bond proposition shall constitute not less than forty percent of the total number of votes cast within the area of said mosquito control district at the last preceding county or state general election.

General obligation bonds shall bear interest at a rate or rates as authorized by the board of trustees. The various annual maturities shall commence not more than two years from the date of issue of the bonds and shall as nearly as practicable be in such amounts as will, together with the interest on all outstanding bonds of such issue, be met by equal annual tax levies.

Such bonds shall never be issued to run for a longer period than ten years from the date of issue.

The bonds shall be signed by the presiding officer of the board of trustees of the district and shall be attested by the secretary of the board, one of which signatures may be a facsimile signature and the seal of the mosquito control district shall be impressed thereon. Each of the interest coupons shall be signed by the facsimile signatures of said officials. General obligation bonds shall be sold at public sale as provided by law for sale of general obligation bonds of cities of the first class and at a price not less than par and accrued interest.

There shall be levied by the officers or governing body now or hereafter charged by law with the duty of levying taxes in the manner provided by law an annual levy in excess of the constitutional and/or statutory tax limitations sufficient to meet the annual or semiannual payments of the principal and interest on the said bonds maturing as herein provided upon all taxable property within the mosquito control district. [1973 1st ex.s. c 195 § 4; 1970 ex.s. c 56 § 5; 1969 ex.s. c 232 § 65; 1957 c 153 § 26.]

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

**Purpose—1970 ex.s. c 56:** See note following RCW 39.44.030.

**17.28.270 Collection, disposition, of revenue—Depository.** All taxes levied under this chapter shall be computed and entered on the county assessment roll and collected at the same time and in the same manner as other county taxes. When collected, the taxes shall be paid into the county treasury for the use of the district.

If the district is in more than one county the treasury of the county in which the district is organized is the depository of all funds of the district.

The treasurers of the other counties shall, at any time, not oftener than twice each year, upon the order of the district board settle with the district board and pay over to the treasurer of the county where the district is organized all money in their possession belonging to the district. The last named treasurer shall give a receipt for the money and place it to the credit of the district. [1957 c 153 § 27.]

**17.28.280 Withdrawal of funds.** The funds shall only be withdrawn from the county treasury depository upon the warrant of the district board signed by its president or acting president, and countersigned by its secretary. [1957 c 153 § 28.]

**17.28.290 Matching funds.** Any part or all of the taxes collected for use of the district may be used for matching funds made available to the district by county, state, or federal governmental agencies. [1957 c 153 § 29.]

**17.28.300 Expenses of special elections.** All expenses of any special election conducted pursuant to the provisions of this chapter shall be paid by the mosquito control district. [1957 c 153 § 30.]

**17.28.310 Annual certification of assessed valuation.** It shall be the duty of the assessor of each county lying wholly or partially within the district to certify annually to the board the aggregate assessed valuation of all taxable property in his county situated in any mosquito control district as the same appears from the last assessment roll of his county. [1957 c 153 § 31.]

**17.28.320 Annexation of territory authorized—Consent by city.** Any territory contiguous to a district may be annexed to the district.

If the territory to be annexed is in a city, consent to the annexation shall first be obtained from the governing body of the city. An authenticated copy of the resolution or order of that body consenting to the annexation shall be attached to the annexation petition. [1957 c 153 § 32.]

**17.28.330 Annexation of territory authorized—Petition—Hearing—Boundaries.** The district board, upon receiving a written petition for annexation containing a description of the territory sought to be annexed, signed by registered voters in said territory equal in number to at least ten percent of the number of votes cast in the territory for the office of governor at the last gubernatorial election prior to the time the petition is

presented, shall set the petition for hearing. It shall publish notice of the hearing along with a copy of the petition, stating the time and place set for the hearing, in each county in which any part of the district or of the territory is situated, and in each city situated wholly or in part in the territory. Not more than five of the names attached to the petition need appear in the publication, but the number of signers shall be stated.

At the time set for the hearing the district board shall hear persons appearing in behalf of the petition and all protests and objections to it. The district board may adjourn the hearing from time to time, but not exceeding two months in all.

On the final hearing the district board shall make such changes as it believes advisable in the boundaries of the territory, and shall define and establish the boundaries. It shall also determine whether the petition meets the requirements of this chapter. [1957 c 153 § 33.]

**17.28.340 Annexation of territory authorized—Order of annexation—Election.** If upon the hearing the district board finds that the petition and the proceedings thereon meet the requirements of this chapter and that it is desirable and to the interests of the district and of the territory proposed to be annexed that the territory, with boundaries as fixed and determined by the district board, or any portion of it, should be annexed to the district, the board shall order the boundaries of the district changed to include the territory, or portion of the territory, subject to approval of the electors of the territory proposed to be annexed. The election to be conducted and the returns canvassed and declared insofar as is practicable in accordance with the requirements of this chapter for the formation of a district. The expenses of such election shall be borne by the mosquito control district regardless of the outcome of the election.

The order of annexation shall describe the boundaries of the annexed territory and that portion of the boundary of the district which coincides with any boundary of the territory. If necessary in making this order, the board may have any portion of the boundaries surveyed.

If more than one petition for the annexation of the territory has been presented, the district board may in one order include in the district any number of separate territories. [1957 c 153 § 34.]

**17.28.350 Annexation of territory authorized—Filing of order—Composition of board.** The order of annexation shall be entered in the minutes of the board and certified copies shall be filed with the secretary of state and with the county clerk and county auditor of each county in which the district or any part of it is situated.

From and after the date of the filing and recording of the certified copies of the order, the territory described in the order is a part of the district, with all the rights, privileges, and powers set forth in this act and those necessarily incident thereto.

After the annexation of territory to a district, the district board shall consist of the number of members and shall be appointed in the manner prescribed by this chapter for a district formed originally with boundaries embracing the annexed territory. However, the members of the district board in office at the time of the annexation shall continue to serve as members during the remainder of the terms for which they were appointed. [1957 c 153 § 35.]

**17.28.360 Consolidation of districts—Initial proceedings.** Whenever in the judgment of the district board it is for the best interests of the district that it be consolidated with one or more other districts, it may, by a two-thirds vote of its members, adopt a resolution reciting that fact and declaring the advisability of such consolidation and the willingness of the board to consolidate. The resolution shall be sent to the board of each district with which consolidation is proposed.

The board of each district to which a proposal of consolidation is sent shall consider said proposal and give notice of its decision to the proposing board. [1957 c 153 § 36.]

**17.28.370 Consolidation of districts—Concurrent resolution.** Should it appear that two-thirds of the members of each of the boards of districts proposed to be consolidated favor consolidation each of said boards shall then, by a vote of not less than two-thirds of its members adopt a concurrent resolution in favor of consolidation, declaring its willingness to consolidate, specifying a name for the consolidated district. Immediately upon the adoption of said concurrent resolution a copy of same signed by not less than two-thirds of the members of each board shall be forwarded to the county commissioners of the county in which all of or a major portion of the land of all, the districts consolidated are situated. [1957 c 153 § 37.]

**17.28.380 Consolidation of districts—Election.** When the concurrent resolution for consolidation has been adopted, each board of the districts proposed for consolidation shall forthwith call a special election in its district in which shall be presented to the electors of the districts the question whether the consolidation shall be effected.

The election shall be conducted and the returns canvassed and declared insofar as is practicable in accordance with the requirements of this chapter for the formation of a district.

The board of each district shall declare the returns of the election in its district, and shall certify the results to the county commissioners of the county in which all the districts, or the major portion of the land of all the districts, are situated. [1957 c 153 § 38.]

**17.28.390 Consolidation of districts—Order of consolidation.** Should not less than two-thirds of the votes of each of the respective districts proposed to be consolidated favor consolidation the county commissioners shall immediately:

(1) Enter an order on its minutes consolidating all of the districts proposed for consolidation into one district with name as specified in the concurrent resolution.

(2) Transmit a certified copy of the order to the county commissioners of any other county in which any portion of the consolidated district is situated.

(3) Record a copy in the office of the county auditor of each of the counties in which any portion of the consolidated district is situated.

(4) File a copy in the office of the secretary of state.

After the transmission, recording and filing of the order, the territory in the districts entering into the consolidation proposal forms a single consolidated district. [1957 c 153 § 39.]

**17.28.400 Consolidation of districts—Composition of board.** After the consolidation, the board of the consolidated district shall consist of the number and shall be appointed in the manner prescribed by this chapter for a district originally formed.

The terms of the members of the district boards of the several districts consolidated who are in office at the time of consolidation shall terminate at the time the consolidation becomes effective. [1957 c 153 § 40.]

**17.28.410 Consolidation of districts—Powers of consolidated district—Indebtedness of former districts.** The consolidated district has all the rights, powers, duties, privileges and obligations of a district formed originally under the provisions of this chapter.

If at the time of consolidation there is outstanding an indebtedness of any of the former districts included in the consolidated district, that indebtedness shall be paid in the manner provided for the payment of indebtedness upon dissolution of a district.

A consolidated district shall not be liable for any indebtedness of any of the former districts included in it which was outstanding at the time of consolidation.

No property in any of the former districts shall be taxed to pay any indebtedness of any other former district existing at the date of the consolidation. [1957 c 153 § 41.]

**17.28.420 Dissolution—Election.** The district may at any time be dissolved upon the vote of two-thirds of the qualified electors in the district at a special election called by the district board upon the question. The question shall be submitted as, "Shall the district be dissolved?", or words to that effect.

Notice of the election shall be published at least once a week for at least four weeks prior to the date of the election in a newspaper of general circulation in each county of the district. [1957 c 153 § 42.]

**17.28.430 Dissolution—Result of election to be certified—Certificate of dissolution.** Should two-thirds or more of the votes at the election favor dissolution the district board shall certify that fact to the secretary of state. Upon receipt of such certification the secretary of state shall issue his certificate reciting that the district (naming it) has been dissolved, and shall transmit to

and file a copy with the county clerk of each county in which any portion of the district is situated.

After the date of the certificate of the secretary of state, the district is dissolved. [1957 c 153 § 43.]

**17.28.440 Dissolution—Disposition of property.** If the district at the time of dissolution was wholly within unincorporated territory in one county, its property vests in that county.

If the district at the time of dissolution was situated wholly within the boundaries of a single city, its property vests in that city.

If the district at the time of dissolution comprised only unincorporated territory in two or more counties, its property vests in those counties in proportion to the assessed value of each county's property within the boundaries of the district as shown on the last equalized county assessment roll.

If the district at the time of dissolution comprised both incorporated and unincorporated territory, its property vests in each unit in proportion as its assessed property value lies within the boundaries of the district: *Provided, however,* That any real property, easements, or rights of way vest in the city in which they are situated or in the county in which they are situated. [1957 c 153 § 44.]

**17.28.450 Dissolution—Collection of taxes to discharge indebtedness.** If, at the time of election to dissolve, a district has outstanding any indebtedness, the vote to dissolve the district dissolves it for all purposes except the levy and collection of taxes for the payment of the indebtedness, and expenses of assessing, levying, and collecting such taxes.

Until the indebtedness is paid, the county commissioners of the county in which the greater portion of the district was situated shall act as the ex officio district board and shall levy taxes and perform such functions as may be necessary in order to pay the indebtedness. [1957 c 153 § 45.]

**17.28.900 Severability—1957 c 153.** If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included therein, if any such remaining part can then be administered in furtherance of the purposes of this chapter. [1957 c 153 § 46.]

### Chapter 17.34 PEST CONTROL COMPACT

#### Sections

|           |   |
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| 17.34.010 | Compact provisions.   |
| 17.34.020 | Cooperation with insurance fund authorized.                           |
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**17.34.010 Compact provisions.** The pest control compact is hereby enacted into law and entered into with all other jurisdiction legally joining therein in the form substantially as follows:

#### ARTICLE I—FINDINGS

The party states find that:

1. In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

2. Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

3. The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

4. While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

#### ARTICLE II—DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

1. "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

2. "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

3. "Responding state" means a state request to undertake or intensify the measures referred to in subdivision (2) of this Article.

4. "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.

5. "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this compact.

6. "Governing Board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

7. "Executive Committee" means the committee established pursuant to Article V(E) of this compact.

## ARTICLE III—THE INSURANCE FUND

There is hereby established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

## ARTICLE IV

## THE INSURANCE FUND, INTERNAL OPERATIONS AND MANAGEMENT

- A. The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.
- B. The members of the Governing Board shall be entitled to one vote each on such Board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.
- C. The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.
- D. The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provisions for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.
- E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.
- F. The Insurance Fund may borrow, accept or contract for the services of personnel from any state,

the United States, or any other governmental agency, or from any person, firm, association or corporation.

- G. The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (F) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.
- H. The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.
- I. The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.
- J. In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

## ARTICLE V

## COMPACT AND INSURANCE FUND ADMINISTRATION

- A. In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:
  - 1. Assist in the coordination of activities pursuant to the compact in his state; and
  - 2. Represent his state on the Governing Board of the Insurance Fund.
- B. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the Federal Government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or on the Executive Committee thereof.
- C. The Governing Board shall meet at least once each year for the purpose of determining policies and

procedures in the administration of the Insurance Fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

- D. At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.
- E. The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

#### ARTICLE VI—ASSISTANCE AND REIMBURSEMENT

- A. Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:
  - 1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.
  - 2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.
- B. Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize

expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

- C. In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:
  - 1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.
  - 2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.
  - 3. A statement of the extent of the present and projected program of the requesting state and its subdivision, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.
  - 4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.
  - 5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.
  - 6. Such other information as the Governing Board may require consistent with the provisions of this compact.
- D. The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.
- E. Upon the submission as required by paragraph (C) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this



compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or the Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

- F. A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.
- G. Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.
- H. Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the Federal Government and shall request the appropriate agency or agencies of the Federal Government for such assistance and participation.
- I. The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states and any other entities concerned.

#### ARTICLE VII—ADVISORY AND TECHNICAL COMMITTEES

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the Governing Board or Executive Committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held

pursuant to Article VI(D) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

#### ARTICLE VIII

##### RELATIONS WITH NONPARTY JURISDICTIONS

- A. A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.
- B. At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI(D) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.
- C. The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

#### ARTICLE IX—FINANCE

- A. The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.
- B. Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party

states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

- C. The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account". The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.
- D. The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(G) of this compact, provided that the Governing Board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV(G) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.
- E. The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Insurance Fund.
- F. The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

#### ARTICLE X—ENTRY INTO FORCE AND WITHDRAWAL

- A. This compact shall enter into force when enacted into law by any five or more states; provided, that one such state is contiguous to this state and the legislature has appropriated the necessary funds. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

- B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### ARTICLE XI—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1969 ex.s. c 130 § 1.]

**17.34.020 Cooperation with insurance fund authorized.** Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the insurance fund established by the Pest Control Compact. [1969 ex.s. c 130 § 2.]

**17.34.030 Filing of bylaws and amendments.** Pursuant to Article IV(H) of the compact, copies of bylaws and amendments thereto shall be filed with the code reviser's office. [1969 ex.s. c 130 § 3.]

**17.34.040 Compact administrator.** The compact administrator for this state shall be the director of agriculture. The duties of the compact administrator shall be deemed a regular part of his office. [1969 ex.s. c 130 § 4.]

**17.34.050 Requests or applications for assistance from insurance fund.** Within the meaning of Article VI(B) or VIII(A), a request or application for assistance from the insurance fund may be made by the director of agriculture whenever in his judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request. [1969 ex.s. c 130 § 5.]

**17.34.060 Agency incurring expenses to be credited with payments to this state.** The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to his account in the state treasury the amount

or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof. [1969 ex.s. c 130 § 6.]

**17.34.070 "Executive head" defined.** As used in the compact, with reference to this state, the term "executive head" shall mean the director of agriculture. [1969 ex.s. c 130 § 7.]



## **CERTIFICATE**

This volume, published officially by the Statute Law Committee, is, in accordance with the provisions of RCW 1.08.037, certified to comply with the current specifications of the committee.

(signed)

ROBERT L. CHARETTE, *Chairman*,  
STATUTE LAW COMMITTEE.

## NOTES