

Title 10

CRIMINAL PROCEDURE

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Chapter 10.01

GENERAL PROVISIONS

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10.01.030 Pleadings—Forms abolished. All the forms of pleading in criminal actions heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed herein. [Code 1881 § 1002; 1873 p 224 § 185; 1869 p 240 § 180; RRS § 2022.]

10.01.040 Statutes—Repeal or amendment—Saving clause presumed. No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act,

and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein. [1901 ex.s. c 6 § 1; RRS § 2006.]

10.01.050 Convictions—Necessary before punishment. No person charged with any offense against the law shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person. [Code 1881 § 770; 1854 p 76 § 6; RRS § 2118.]

10.01.060 Conviction—Requisites—Waiver of jury trial. No person informed against or indicted for a crime shall be convicted thereof, unless by admitting the truth of the charge in his plea, by confession in open court, or by the verdict of a jury, accepted and recorded by the court: PROVIDED HOWEVER, That except in capital cases, where the person informed against or indicted for a crime is represented by counsel, such person may, with the assent of the court, waive trial by jury and submit to trial by the court. [1951 c 52 § 1; 1909 c 249 § 57; 1891 c 28 § 91; Code 1881 § 767; 1873 p 180 § 3; 1869 p 198 § 3; 1859 p 105 § 3; 1854 p 76 § 3; RRS § 2309.]

Self-incriminating testimony: State Constitution Art. 1 § 9.

10.01.070 Corporations—Amenable to criminal process—How. Whenever an indictment or information shall be filed in any superior court against a corporation charging it with the commission of a crime, a summons shall be issued by the clerk of such court, signed by one of the judges thereof, commanding the sheriff forthwith to notify the accused thereof, and commanding it to appear before such court at such time as shall be specified in said summons. Such summons and a copy of the indictment or information shall be at once delivered by such clerk to said sheriff and by the sheriff forthwith served and returned in the manner provided for service of summons upon such corporation in a civil action. Whenever a complaint against a corporation, charging it with the commission of a crime, shall be made before any district or municipal judge, a like summons, signed by such judge, shall be issued, which, together with a copy of said complaint, shall be delivered to the sheriff at once and by the sheriff forthwith served as herein provided. [1987 c 202 § 147; 1911 c 29 § 1; RRS § 2011-1.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.01.090 Corporations—Judgment against. If the corporation shall be found guilty and a fine imposed, it shall be entered and docketed by the clerk, or district or municipal court as a judgment against the corporation, and it shall be of the same force and effect and be enforced against such corporation in the same manner as a judgment in a civil action. [1987 c 202 § 148; 1911 c 29 § 3; RRS § 2011-3.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.01.100 Corporations—Penalties—Fines in lieu of other punishments. Every corporation guilty of a violation of any law of the state of Washington, where the prescribed penalty is, for any reason, incapable of execution or enforcement against such corporation, shall be punished by a fine of not more than ten thousand dollars, if such offense is a felony; or, by a fine of not more than one thousand dollars if such offense is a gross misdemeanor; or, by a fine of not more than five hundred dollars if such offense is a misdemeanor. [1925 ex.s. c 101 § 1; RRS § 2011-4.]

10.01.113 Indigent party—State payment of review costs. See RCW 4.88.330.

10.01.120 Pardons—Reprieves—Commutations. Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life at hard labor; and in all cases in which the governor is authorized to grant pardons or commute sentence of death, he may, upon the petition of the person convicted, commute a sentence or grant a pardon, upon such conditions, and with such restrictions, and under such limitations as he may think proper; and he may issue his warrant to all proper officers to carry into effect such pardon or commutation, which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he may think proper. [Code 1881 § 1136; 1854 p 128 § 174; RRS § 2223.]

Governor's powers: State Constitution Art. 3 §§ 9, 11.

Record of pardons, etc., governor to keep: RCW 43.06.020.

10.01.130 Witnesses' fees. No fees shall be allowed to witnesses in criminal causes unless they shall have reported their attendance at the close of each day's session to the clerk in attendance thereon. [1895 c 10 § 1; RRS § 498, part. FORMER PART OF SECTION: 1895 c 10 § 2; RRS § 498, part, now codified as RCW 10.01.140.]

Rules of court: Cf. CrR 6.12.

Witness fees: Chapters 2.40, 12.16 RCW.

10.01.140 Mileage allowance—Jurors—Witnesses. No allowance of mileage shall be made to a juror or witness who has not verified his claim of mileage under oath before the clerk of the court on which he is in attendance. [1895 c 10 § 2; RRS § 498, part. Formerly RCW 10.01.130, part.]

10.01.150 Charges arising from official acts of state officers or employees—Defense by attorney general. Whenever a state officer or employee is charged with a

criminal offense arising out of the performance of an official act which was fully in conformity with established written rules, policies, and guidelines of the state or state agency, the employing agency may request the attorney general to defend the officer or employee. If the agency finds, and the attorney general concurs, that the officer's or employee's conduct was fully in accordance with established written rules, policies, and guidelines of the state or a state agency and the act performed was within the scope of employment, then the request shall be granted and the costs of defense shall be paid by the requesting agency: PROVIDED, HOWEVER, If the agency head is the person charged, then approval must be obtained from both the attorney general and the state auditor. If the court finds that the officer or employee was performing an official act, or was within the scope of employment, and that his actions were in conformity with the established rules, regulations, policies, and guidelines of the state and the state agency, the cost of any monetary fine assessed shall be paid from the tort claims revolving fund. [1975 1st ex.s. c 144 § 1.]

10.01.160 Costs—What constitutes—Payment by defendant—Procedure—Remission. (1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed fifty dollars per day of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the

court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170. [1995 c 221 § 1; 1994 c 192 § 1; 1991 c 247 § 4; 1987 c 363 § 1; 1985 c 389 § 1; 1975-'76 2nd ex.s. c 96 § 1.]

Commitment for failure to pay fine and costs: RCW 10.70.010, 10.82.030.

Defendant liable for costs: RCW 10.64.015.

Fine and costs—Collection and disposition: Chapter 10.82 RCW.

10.01.170 Fine or costs—Payment within specified time or installments. When a defendant is sentenced to pay a fine or costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence the fine or costs shall be payable forthwith. [1975-'76 2nd ex.s. c 96 § 2.]

Payment of fine and costs in installments: RCW 9.92.070.

10.01.180 Fine or costs—Default in payment—Contempt of court—Enforcement, collection procedures.

(1) A defendant sentenced to pay a fine or costs who defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW. The court may issue a warrant of arrest for his appearance.

(2) When a fine or assessment of costs is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or costs from those assets, and his failure to do so may be held to be contempt.

(3) If a term of imprisonment for contempt for nonpayment of a fine or costs is ordered, the term of imprisonment shall be set forth in the commitment order, and shall not exceed one day for each twenty-five dollars of the fine or costs, thirty days if the fine or assessment of costs was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

(4) If it appears to the satisfaction of the court that the default in the payment of a fine or costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or costs or the unpaid portion thereof in whole or in part.

(5) A default in the payment of a fine or costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or costs has actually

been collected. [1989 c 373 § 13; 1975-'76 2nd ex.s. c 96 § 3.]

Severability—1989 c 373: See RCW 7.21.900.

Fine and costs—Collection procedure, commitment for failure to pay, execution against defendant's property: Chapter 10.82 RCW.

10.01.190 Prosecutorial powers of attorney general.

In any criminal proceeding instituted or conducted by the attorney general, the attorney general and assistants are deemed to be prosecuting attorneys and have all prosecutorial powers vested in prosecuting attorneys of the state of Washington by statute or court rule. [1981 c 335 § 4.]

Purpose—1981 c 335: See RCW 43.10.230.

10.01.200 Registration of sex offenders and kidnapping offenders—Notice to defendants. The court shall provide written notification to any defendant charged with a sex offense or kidnapping offense of the registration requirements of RCW 9A.44.130. Such notice shall be included on any guilty plea forms and judgment and sentence forms provided to the defendant. [1997 c 113 § 5; 1990 c 3 § 404.]

Findings—1997 c 113: See note following RCW 4.24.550.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Sex offense and kidnapping offense defined: RCW 9A.44.130.

10.01.210 Offender notification and warning. Any and all law enforcement agencies and personnel, criminal justice attorneys, sentencing judges, and state and local correctional facilities and personnel may, but are not required to, give any and all offenders either written or oral notice, or both, of the sanctions imposed and criminal justice changes regarding armed offenders, including but not limited to the subjects of:

(1) Felony crimes involving any deadly weapon special verdict under RCW 9.94A.125;

(2) Any and all deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, as well as any federal firearm, ammunition, or other deadly weapon enhancements;

(3) Any and all felony crimes requiring the possession, display, or use of any deadly weapon as well as the many increased penalties for these crimes including the creation of theft of a firearm and possessing a stolen firearm;

(4) New prosecuting standards established for filing charges for all crimes involving any deadly weapons;

(5) Removal of good time for any and all deadly weapon enhancements; and

(6) Providing the death penalty for those who commit first degree murder: (a) To join, maintain, or advance membership in an identifiable group; (b) as part of a drive-by shooting; or (c) to avoid prosecution as a persistent offender as defined in RCW 9.94A.030. [1995 c 129 § 18 (Initiative Measure No. 159).]

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.310.

Chapter 10.04

DISTRICT COURT PROCEDURE—GENERALLY

Sections

10.04.020	Arrest—Offense committed in view of district judge.
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10.04.120	Stay of execution.
10.04.800	Proposed forms for criminal actions.

Rules of court: See *Criminal Rules for Courts of Limited Jurisdiction (CrRLJ)*.

10.04.020 Arrest—Offense committed in view of district judge. When any offense is committed in view of any district judge, the judge may, by verbal direction to any deputy, or if no deputy is present, to any citizen, cause such deputy or citizen to arrest such offender, and keep such offender in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant. [1987 c 202 § 149; Code 1881 § 1888; Code 1881 § 1889, part; 1873 p 382 § 186; 1854 p 260 § 173; RRS § 1926, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.04.040 Cash bail in lieu of recognizance. District courts or committing magistrates may accept money as bail from persons charged with bailable offenses, and for the appearance of witnesses in all cases provided by law for the recognizance of witnesses. The amount of such bail or recognizance in each case shall be determined by the court in its discretion, and may from time to time be increased or decreased as circumstances may justify. The money to be received and accounted for in the same manner as provided by law for the superior courts. [1987 c 202 § 150; 1919 c 76 § 1; RRS § 1957 1/2.]

Intent—1987 c 202: See note following RCW 2.04.190.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

10.04.050 Jury—If demanded. In all trials for offenses within the jurisdiction of a district judge, the defendant or the state may demand a jury, which shall consist of six, or a less number, agreed upon by the state and accused, to be impaneled and sworn as in civil cases; or the trial may be by the judge. When the complaint is for a crime or misdemeanor in the exclusive jurisdiction of the superior court, the justice hears the case as a committing magistrate, and no jury shall be allowed. [1987 c 202 § 151; 1891 c 11 § 1; Code 1881 § 1890; 1875 p 51 § 2; 1873 p 382 § 188; 1854 p 260 § 174, part; RRS § 1927.]

Intent—1987 c 202: See note following RCW 2.04.190.

Charging juries: State Constitution Art. 4 § 16.

Convicted persons liable for costs and jury fees: RCW 10.46.190.

Right to trial by jury: State Constitution Art. 1 § 21.

10.04.070 Plea of guilty. The defendant may plead guilty to any offense charged. [Code 1881 § 1892; 1873 p 383 § 190; 1854 p 260 § 174, part; RRS § 1929.]

10.04.100 Verdict of guilty—Proceedings upon. The judge, if the prisoner is found guilty, shall assess the prisoner's punishment; or if, in the judge's opinion, the punishment the judge is authorized to assess is not adequate to the offense, he or she may so find, and in such case the judge shall order such defendant to enter recognizance to appear in the superior court of the county, and shall also recognize the witnesses, and proceed as in proceedings by a committing magistrate. [1987 c 202 § 152; 1891 c 11 § 2; Code 1881 § 1891; 1873 p 382 § 189; 1854 p 260 § 174; RRS § 1928.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.04.101 Assessment of punishment by courts organized under 1961 justice of the peace act. See RCW 3.66.065.

10.04.110 Judgment—Entry—Execution—Remittance of district court fines, etc. In all cases of conviction, unless otherwise provided in this chapter, the judge shall enter judgment for the fine and costs against the defendant, and may commit him to jail until the amount of such fine and costs owing are paid, or the payment thereof be secured as provided by RCW 10.04.120. The amount of such fine and costs owing shall be computed as provided for superior court cases in RCW 10.82.030 and 10.82.040. Further proceedings therein shall be had as in like cases in the superior court: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district 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. [1987 c 202 § 153; 1969 ex.s. c 199 § 10; 1967 c 200 § 6; 1891 c 11 § 6; Code 1881 § 1896; 1873 p 383 § 194; 1854 p 261 § 176; RRS § 1933.]

Intent—1987 c 202: See note following RCW 2.04.190.

Convicted persons liable for jury fees: RCW 10.46.190.

10.04.120 Stay of execution. Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties, to be approved by the district judge, to enter into recognizance before the district judge for the payment of the fine and costs; the entry of such recognizance shall be made on the docket of the district judge, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the district judge shall proceed as in like cases in the superior court. [1987 c 202 § 154; Code 1881 § 1897; 1873 p 383 § 195; 1854 p 261 § 176; RRS § 1934.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.04.800 Proposed forms for criminal actions. The district and municipal court judges' association may propose to the supreme court suggested forms for criminal actions for inclusion in the justice court criminal rules. [1994 c 32 § 6; 1987 c 202 § 155.]

Rules of Court: CrRLJ 2.1, 4.2.

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 10.05

DEFERRED PROSECUTION—COURTS OF LIMITED JURISDICTION

Sections

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10.05.050	Report to court by treatment facility—Recommended treatment plan—Commitment to provide treatment.
10.05.060	Docket and abstract procedure upon approval of treatment plan.
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10.05.140	Conditions of granting.
10.05.150	Alcoholism program requirements.
10.05.160	Appeal of order granting deferred prosecution.
10.05.170	Supervision as condition—Levy of assessment.

10.05.010 Eligibility—Time for petition. (*Effective until January 1, 1999.*) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once in any five-year period. Separate offenses committed more than seven days apart may not be consolidated in a single program. [1985 c 352 § 4; 1982 1st ex.s. c 47 § 26; 1975 1st ex.s. c 244 § 1.]

Legislative finding—1985 c 352: "The legislature finds that the deferred prosecution program is an alternative to punishment for persons who will benefit from a treatment program if the treatment program is provided under circumstances that do not unreasonably endanger public safety or the traditional goals of the criminal justice system. This alternative to punishment is dependent for success upon appropriate treatment and the willingness and ability of the person receiving treatment to cooperate fully with the treatment program. The legislature finds that some persons have sought deferred prosecution but have been unable or unwilling to cooperate with treatment requirements and escaped punishment because of the difficulties in resuming prosecution after significant delay due to the absence of witnesses at a later date and the congestion in courts at a later date. The legislature further finds that the deferred prosecution statutes require clarification. The purpose of sections 4 through 19 of this act is to provide specific standards and procedures for judges and prosecutors to use in carrying out the original intent of the deferred prosecution statutes." [1985 c 352 § 3.]

Severability—1985 c 352: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 352 § 22.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

10.05.010 Eligibility—Time for petition. (*Effective January 1, 1999.*) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once. Separate offenses committed more than seven days apart may not be consolidated in a single program. [1998 c 208 § 1; 1985 c 352 § 4; 1982 1st ex.s. c 47 § 26; 1975 1st ex.s. c 244 § 1.]

Effective date—1998 c 208: "This act takes effect January 1, 1999." [1998 c 208 § 7.]

Legislative finding—1985 c 352: "The legislature finds that the deferred prosecution program is an alternative to punishment for persons who will benefit from a treatment program if the treatment program is provided under circumstances that do not unreasonably endanger public safety or the traditional goals of the criminal justice system. This alternative to punishment is dependent for success upon appropriate treatment and the willingness and ability of the person receiving treatment to cooperate fully with the treatment program. The legislature finds that some persons have sought deferred prosecution but have been unable or unwilling to cooperate with treatment requirements and escaped punishment because of the difficulties in resuming prosecution after significant delay due to the absence of witnesses at a later date and the congestion in courts at a later date. The legislature further finds that the deferred prosecution statutes require clarification. The purpose of sections 4 through 19 of this act is to provide specific standards and procedures for judges and prosecutors to use in carrying out the original intent of the deferred prosecution statutes." [1985 c 352 § 3.]

Severability—1985 c 352: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 352 § 22.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

10.05.015 Statement of availability. At the time of arraignment a person charged with a violation of RCW 46.61.502 or 46.61.504 may be given a statement by the court that explains the availability, operation, and effects of the deferred prosecution program. [1985 c 352 § 5.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.020 Requirements of petition—Rights of petitioner—Court findings. (1) The petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental problems for which the person is in need of treatment

and unless treated the probability of future reoccurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved alcoholism treatment program as designated in chapter 70.96A RCW if the petition alleges alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction, or by an approved mental health center if the petition alleges a mental problem.

(2) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgement of his or her rights; (b) an acknowledgement and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report; and (d) an acknowledgement that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who sincerely believes that he or she is innocent of the charges or sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, or mental problems.

(3) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution. [1996 c 24 § 1; 1985 c 352 § 6; 1975 1st ex.s. c 244 § 2.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Criminal history and driving record: RCW 46.61.513.

10.05.030 Arraignment continued—Referral to treatment facility. The arraigning judge upon consideration of the petition and with the concurrence of the prosecuting attorney may continue the arraignment and refer such person for a diagnostic investigation and evaluation to an approved alcoholism *treatment facility as designated in chapter 70.96A RCW, if the petition alleges an alcohol problem, an

approved drug treatment center as designated in chapter 71.24 RCW, if the petition alleges a drug problem, or to an approved mental health center, if the petition alleges a mental problem. [1975 1st ex.s. c 244 § 3.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

10.05.040 Investigation and examination by *treatment facility. The facility to which such person is referred shall conduct an investigation and examination to determine:

(1) Whether the person suffers from the problem described;

(2) Whether the problem is such that if not treated there is a probability that similar misconduct will occur in the future;

(3) Whether extensive and long term treatment is required;

(4) Whether effective treatment for the person's problem is available; and

(5) Whether the person is amenable to treatment. [1985 c 352 § 7; 1975 1st ex.s. c 244 § 4.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.050 Report to court by *treatment facility—Recommended treatment plan—Commitment to provide treatment. The facility shall make a written report to the court stating its findings and recommendations after the examination required by RCW 10.05.040. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

(1) The type;

(2) Nature;

(3) Length;

(4) A treatment time schedule; and

(5) Approximate cost of the treatment.

The report with the treatment plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment plan shall be given to the prosecutor by petitioner's counsel at the request of the prosecutor. The evaluation facility making the written report shall append to the report a commitment by the *treatment facility that it will provide the treatment in accordance with this chapter. The facility shall agree to provide the court with a statement every three months for the first year and every six months for the second year regarding (a) the petitioner's cooperation with the treatment plan proposed and (b) the petitioner's progress or failure in treatment. These statements shall be made as a declaration by the person who is personally responsible for providing the treatment. [1985 c 352 § 8; 1975 1st ex.s. c 244 § 5.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.060 Docket and abstract procedure upon approval of treatment plan. If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with

its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be attached to the docket, which shall then be removed from the regular court dockets and filed in a special court deferred prosecution file. If the charge be one that an abstract of the docket showing the charge, the date of the violation for which the charge was made, and the date of petitioner's acceptance is required to be sent to the department of licensing, an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the petitioner's acceptance for deferred prosecution on the department's driving record of the petitioner. The entry is not a conviction for purposes of Title 46 RCW. Upon receipt of the abstract of the docket, the department shall issue the petitioner a probationary license in accordance with RCW 46.20.355, and the petitioner's driver's license shall be on probationary status for five years from the date of the violation that gave rise to the charge. The department shall maintain the record for ten years from date of entry of the order granting deferred prosecution. [1994 c 275 § 17; 1990 c 250 § 13; 1985 c 352 § 9; 1979 c 158 § 4; 1975 1st ex.s. c 244 § 6.]

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

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

Severability—1990 c 250: See note following RCW 46.16.301

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.070 Petitioner arraigned when treatment rejected. When treatment is either not recommended or not approved by the judge, or the petitioner declines to accept the treatment plan, the petitioner shall be arraigned on the charge. [1985 c 352 § 10; 1975 1st ex.s. c 244 § 7.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.080 Evidence, uses and admissibility. If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition and/or investigation is inadmissible in any trial on the charges, but shall be available for use after a conviction in determining a sentence. [1985 c 352 § 11; 1975 1st ex.s. c 244 § 8.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.090 Procedure upon breach of treatment plan. If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan or any term or condition imposed in connection with the installation of an interlock or other device under RCW 46.20.720, the facility, center, institution, or agency administering the treatment or the entity administering the use of the device, shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program.

At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan or device installation and the petitioner shall have the right to present evidence on his or her own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to RCW 10.05.020 and, if the charge for which the deferred prosecution was granted was a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the department of licensing of the removal and entry of judgment. [1997 c 229 § 1; 1994 c 275 § 18; 1985 c 352 § 12; 1975 1st ex.s. c 244 § 9.]

Effective date—1997 c 229: "This act takes effect January 1, 1998." [1997 c 229 § 15.]

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

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.100 Conviction of similar offense. (Effective until January 1, 1999.) If a petitioner is subsequently convicted of a similar offense while in a deferred prosecution program, upon notice the court shall remove the petitioner's docket from the deferred prosecution file and the court shall enter judgment pursuant to RCW 10.05.020. [1985 c 352 § 13; 1975 1st ex.s. c 244 § 10.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.100 Conviction of similar offense. (Effective January 1, 1999.) If a petitioner is subsequently convicted of a similar offense that was committed while the petitioner was in a deferred prosecution program, upon notice the court shall remove the petitioner's docket from the deferred prosecution file and the court shall enter judgment pursuant to RCW 10.05.020. [1998 c 208 § 2; 1985 c 352 § 13; 1975 1st ex.s. c 244 § 10.]

Effective date—1998 c 208: See note following RCW 10.05.010.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.110 Trial delay not grounds for dismissal. Delay in bringing a case to trial caused by a petitioner requesting deferred prosecution as provided for in this chapter shall not be grounds for dismissal. [1985 c 352 § 14; 1975 1st ex.s. c 244 § 11.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.120 Dismissal of charges. (Effective until January 1, 1999.) Upon proof of successful completion of the two-year treatment program, the court shall dismiss the charges pending against the petitioner. [1994 c 275 § 19; 1985 c 352 § 15; 1983 c 165 § 45; 1975 1st ex.s. c 244 § 12.]

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

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

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

10.05.120 Dismissal of charges. (Effective January 1, 1999.) Three years after receiving proof of successful completion of the two-year treatment program, but not before five years following entry of the order of deferred prosecution, the court shall dismiss the charges pending against the petitioner. [1998 c 208 § 3; 1994 c 275 § 19; 1985 c 352 § 15; 1983 c 165 § 45; 1975 1st ex.s. c 244 § 12.]

Effective date—1998 c 208: See note following RCW 10.05.010.

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

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

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

10.05.130 Services provided for indigent defendants. Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment. [1975 1st ex.s. c 244 § 13.]

10.05.140 Conditions of granting. As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition, the court may also order the installation of an interlock or other device under RCW 46.20.720. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. The court may terminate the deferred prosecution program upon violation of this section. [1997 c 229 § 2; 1991 c 247 § 1; 1985 c 352 § 16.]

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

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.150 Alcoholism program requirements. A deferred prosecution program for alcoholism shall be for a two-year period and shall include, but not be limited to, the following requirements:

(1) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;

(2) Participation in an intensive inpatient or intensive outpatient program in a state-approved alcoholism *treatment facility;

(3) Participation in a minimum of two meetings per week of an alcoholism self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;

(4) Participation in an alcoholism self-help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;

(5) Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;

(6) Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;

(7) The decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;

(8) All treatment within the purview of this section shall occur within or be approved by a state-approved alcoholism *treatment facility as described in chapter 70.96A RCW;

(9) Signature of the petitioner agreeing to the terms and conditions of the treatment program. [1985 c 352 § 17.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.160 Appeal of order granting deferred prosecution. (*Effective until January 1, 1999.*) The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

(1) Prior deferred prosecution has been granted to the defendant within five years;

(2) Failure of the court to obtain proof of insurance or a treatment plan conforming to the requirements of this chapter;

(3) Failure of the court to comply with the requirements of RCW 10.05.100;

(4) Failure of the evaluation facility to provide the information required in RCW 10.05.040 and 10.05.050, if the defendant has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another *treatment facility. [1985 c 352 § 18.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.160 Appeal of order granting deferred prosecution. (*Effective January 1, 1999.*) The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

(1) Prior deferred prosecution has been granted to the defendant;

(2) Failure of the court to obtain proof of insurance or a treatment plan conforming to the requirements of this chapter;

(3) Failure of the court to comply with the requirements of RCW 10.05.100;

(4) Failure of the evaluation facility to provide the information required in RCW 10.05.040 and 10.05.050, if the defendant has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another *treatment facility. [1998 c 208 § 4; 1985 c 352 § 18.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Effective date—1998 c 208: See note following RCW 10.05.010.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.170 Supervision as condition—Levy of assessment. As a condition of granting deferred prosecution, the court may order supervision of the petitioner during the period of deferral and may levy a monthly assessment upon the petitioner as provided in RCW 10.64.120. In a jurisdiction with a probation department, the court may appoint the probation department to supervise the petitioner. In a jurisdiction without a probation department, the court may appoint an appropriate person or agency to supervise the petitioner. A supervisor appointed under this section shall be required to do at least the following:

(1) If the charge for which deferral is granted relates to operation of a motor vehicle, at least once every six months request from the department of licensing an abstract of the petitioner's driving record; and

(2) At least once every month make contact with the petitioner or with any agency to which the petitioner has been directed for treatment as a part of the deferral. [1991 c 247 § 2; 1985 c 352 § 19.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Chapter 10.10

CRIMINAL APPEALS FROM DISTRICT COURTS

Sections

10.10.010 Court rules.

10.10.060 Appeal—Costs—Default.

Rules of court: *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).*

10.10.010 Court rules. Every person convicted before a district judge of any offense may appeal from the judgment as provided by court rules. [1987 c 202 § 156; 1891 c 29 § 6, part; RRS § 1919, part. Prior: Code 1881 § 1898, part; 1877 p 203 § 7, part; 1873 p 384 § 196, part; 1854 p 261 § 177. Formerly RCW 10.10.010, 10.10.020, and 10.10.030.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.10.060 Appeal—Costs—Default. The appellant in a criminal action shall not be required to advance any fees in claiming his appeal nor in prosecuting the same; but if convicted in the appellate court, or if sentenced for failing to prosecute his appeal, he may be required as a part of the sentence to pay the costs of the prosecution. If the appellant shall fail to enter and prosecute his appeal he shall be defaulted of his recognizance, if any was taken, and the superior court may award sentence against him for the offense whereof he was convicted in like manner as if he had been convicted thereof in that court; and if he be not then in custody process may be issued to bring him into court to receive sentence. [1891 c 29 § 7; RRS § 1920. Prior: Code 1881 § 1900; 1873 p 384 § 198, part; 1854 p 261 § 179. Formerly RCW 10.10.060 and 10.10.080.]

Chapter 10.14
HARASSMENT

Sections

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10.14.200	Availability of orders in proceedings under chapter 26.09, 26.10, or 26.26 RCW.
10.14.900	Severability—1987 c 280.

10.14.010 Legislative finding, intent. The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator. [1987 c 280 § 1.]

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

(1) "Unlawful harassment" means a knowing and wilful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct is contact by a person over age eighteen that would cause a reasonable parent to fear for the well-being of their child.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." [1995 c 127 § 1; 1987 c 280 § 2.]

10.14.030 Course of conduct—Determination of purpose. In determining whether the course of conduct serves any legitimate or lawful purpose, the court should consider whether:

(1) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(2) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(3) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(4) The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to:

(a) Protect property or liberty interests;

(b) Enforce the law; or

(c) Meet specific statutory duties or requirements;

(5) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;

(6) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order. [1987 c 280 § 3.]

10.14.040 Protection order—Petition. There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) Filing fees are set in RCW 36.18.020, but no filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6) The parent or guardian of a child under age eighteen may petition for an order of protection to restrain a person over age eighteen from contact with that child upon a showing that contact with the person to be enjoined is detrimental to the welfare of the child. [1995 c 292 § 2; 1995 c 127 § 2; 1987 c 280 § 4.]

Reviser's note: This section was amended by 1995 c 127 § 2 and by 1995 c 292 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

10.14.050 Administrator for courts—Forms, information. The administrator for the courts shall develop and prepare, in consultation with interested persons, model forms and instructional brochures required under RCW 10.14.040(3). [1987 c 280 § 5.]

10.14.060 Proceeding in forma pauperis. Persons seeking relief under this chapter may file an application for leave to proceed in forma pauperis on forms supplied by the court. If the court determines that a petitioner lacks the funds to pay the costs of filing, the petitioner shall be granted leave to proceed in forma pauperis and no filing fee or any other court related fees shall be charged by the court to the petitioner for relief sought under this chapter. If the petitioner is granted leave to proceed in forma pauperis, then no fees for service may be charged to the petitioner. [1987 c 280 § 6.]

10.14.070 Hearing—Service. Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 10.14.080 and 10.14.085. [1992 c 143 § 10; 1987 c 280 § 7.]

10.14.080 Antiharassment protection orders—Ex parte temporary—Hearing—Longer term, renewal. (1) Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted.

(2) An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 10.14.085. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication is permitted. Except as provided in RCW 10.14.070 and 10.14.085, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(3) At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

(4) An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a

permanent antiharassment protection order. The court shall not enter an order that is effective for more than one year if the order restrains the respondent from contacting the respondent's minor children. This limitation is not applicable to civil antiharassment protection orders issued under chapter 26.09, 26.10, or 26.26 RCW. If the petitioner seeks relief for a period longer than one year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to chapter 26.09 or 26.10 RCW.

(5) At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in subsection (4) of this section.

(6) The court, in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

- (a) Restraining the respondent from making any attempts to contact the petitioner;
- (b) Restraining the respondent from making any attempts to keep the petitioner under surveillance;
- (c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace; and
- (d) Considering the provisions of RCW 9.41.800.

(7) A petitioner may not obtain an ex parte temporary antiharassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil antiharassment protection order unless good cause for such failure can be shown.

(8) The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section. [1995 c 246 § 36; 1994 sp.s. c 7 § 448; 1992 c 143 § 11; 1987 c 280 § 8.]

Severability—1995 c 246: See note following RCW 26.50.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

10.14.085 Hearing reset after ex parte order—Service by publication—Circumstances. (1) If the respondent was not personally served with the petition, notice of hearing, and ex parte order before the hearing, the court shall reset the hearing for twenty-four days from the date of entry of the order and may order service by publication instead of personal service under the following circumstances:

(a) The sheriff or municipal officer files an affidavit stating that the officer was unable to complete personal service upon the respondent. The affidavit must describe the number and types of attempts the officer made to complete service;

(b) The petitioner files an affidavit stating that the petitioner believes that the respondent is hiding from the server to avoid service. The petitioner’s affidavit must state the reasons for the belief that the petitioner [respondent] is avoiding service;

(c) The server has deposited a copy of the summons, in substantially the form prescribed in subsection (3) of this section, notice of hearing, and the ex parte order of protection in the post office, directed to the respondent at the respondent’s last known address, unless the server states that the server does not know the respondent’s address; and

(d) The court finds reasonable grounds exist to believe that the respondent is concealing himself or herself to avoid service, and that further attempts to personally serve the respondent would be futile or unduly burdensome.

(2) The court shall reissue the temporary order of protection not to exceed another twenty-four days from the date of reissuing the ex parte protection order and order to provide service by publication.

(3) The publication shall be made in a newspaper of general circulation in the county where the petition was brought and in the county of the last known address of the respondent once a week for three consecutive weeks. The newspaper selected must be one of the three most widely circulated papers in the county. The publication of summons shall not be made until the court orders service by publication under this section. Service of the summons shall be considered complete when the publication has been made for three consecutive weeks. The summons must be signed by the petitioner. The summons shall contain the date of the first publication, and shall require the respondent upon whom service by publication is desired, to appear and answer the petition on the date set for the hearing. The summons shall also contain a brief statement of the reason for the petition and a summary of the provisions under the ex parte order. The summons shall be essentially in the following form:

In the court of the state of Washington for the county of
., Petitioner
vs. No.
., Respondent
The state of Washington to (respondent):

You are hereby summoned to appear on the day of, 19. . . ., at a.m./p.m., and respond to the petition. If you fail to respond, an order of protection will be issued against you pursuant to the provisions of chapter 10.14 RCW, for a minimum of one year from the date you are required to appear. A temporary order of protection has been issued against you, restraining you from the following: (Insert a brief statement of the provisions of the ex parte order). A copy of the petition, notice of hearing, and ex parte order has been filed with the clerk of this court.

.
Petitioner

[1992 c 143 § 12.]

10.14.090 Representation or appearance. (1) Nothing in this chapter shall preclude either party from representation by private counsel or from appearing on his or her own behalf.

(2) The court may require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney’s fee. If the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent to pay the filing fee and costs, including services fees, to the county or municipality incurring the expense. [1992 c 143 § 14; 1987 c 280 § 9.]

10.14.100 Service of order. (1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (5) and (7) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner.

(4) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(6) Except in cases where the petitioner is granted leave to proceed in forma pauperis, municipal police departments serving documents as required under this chapter may collect the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(7) If the court previously entered an order allowing service by publication of the notice of hearing and temporary order of protection pursuant to RCW 10.14.085, the court may permit service by publication of the order of protection issued under RCW 10.14.080. Service by publication must comply with the requirements of RCW 10.14.085. [1992 c 143 § 15; 1987 c 280 § 10.]

10.14.105 Order following service by publication. Following completion of service by publication as provided

in RCW 10.14.085, if the respondent fails to appear at the hearing, the court may issue an order of protection as provided in RCW 10.14.080. That order must be served pursuant to RCW 10.14.100, and forwarded to the appropriate law enforcement agency pursuant to RCW 10.14.110. [1992 c 143 § 13.]

10.14.110 Notice to law enforcement agencies—Enforceability. (1) A copy of an antiharassment protection order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The law enforcement agency shall expunge expired orders from the computer system. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The information entered into the computer-based system shall include notice to law enforcement whether the order was personally served or served by publication. [1992 c 143 § 16; 1987 c 280 § 11.]

10.14.115 Enforcement of order—Knowledge prerequisite to penalties—Reasonable efforts to serve copy of order. (1) When the court issues an order of protection pursuant to RCW 10.14.080, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 10.14.120 and 10.14.170 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation. [1992 c 143 § 17.]

10.14.120 Disobedience of order—Penalties. Any willful disobedience by the respondent of any temporary antiharassment protection order or civil antiharassment protection order issued under this chapter subjects the respondent to criminal penalties under this chapter. Any respondent who willfully disobeys the terms of any order issued under this chapter may also, in the court's discretion, be found in contempt of court and subject to penalties under chapter 7.21 RCW. [1989 c 373 § 14; 1987 c 280 § 12.]

Severability—1989 c 373: See RCW 7.21.900.

10.14.125 Service by publication—Costs. The court may permit service by publication under this chapter only if the petitioner pays the cost of publication unless the county legislative authority allocates funds for service of process by publication for petitioners who are granted leave to proceed in forma pauperis. [1992 c 143 § 18.]

10.14.130 Exclusion of certain actions. Protection orders authorized under this chapter shall not be issued for any action specifically covered by chapter 10.99 or 26.50 RCW. [1987 c 280 § 13.]

10.14.140 Other remedies. Nothing in this chapter shall preclude a petitioner's right to utilize other existing civil remedies. [1987 c 280 § 14.]

10.14.150 Jurisdiction. The district courts shall have jurisdiction and cognizance of any civil actions and proceedings brought under this chapter. Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district court judge makes findings of fact and conclusions of law showing that meritorious reasons exist [exist] for the transfer. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170. [1991 c 33 § 2; 1987 c 280 § 15.]

Effective date—1991 c 33: See note following RCW 3.66.020.

10.14.160 Where action may be brought. For the purposes of this chapter an action may be brought in:

(1) The judicial district of the county in which the alleged acts of unlawful harassment occurred;

(2) The judicial district of the county where any respondent resides at the time the petition is filed; or

(3) The judicial district of the county where a respondent may be served if it is the same county or judicial district where a respondent resides. [1992 c 127 § 1; 1987 c 280 § 16.]

10.14.170 Criminal penalty. Any respondent who wilfully disobeys any civil antiharassment protection order issued pursuant to this chapter shall be guilty of a gross misdemeanor. [1987 c 280 § 17.]

10.14.180 Modification of order. Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order under this chapter. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified order or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system. [1987 c 280 § 18.]

10.14.190 Constitutional rights. Nothing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly. [1987 c 280 § 19.]

10.14.200 Availability of orders in proceedings under chapter 26.09, 26.10, or 26.26 RCW. Any order available under this chapter may be issued in actions under chapter 26.09, 26.10, or 26.26 RCW. An order available under this chapter that is issued under those chapters shall be

fully enforceable and shall be enforced pursuant to the provisions of this chapter. [1995 c 246 § 35.]

Severability—1995 c 246: See note following RCW 26.50.010.

10.14.900 Severability—1987 c 280. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 280 § 22.]

Chapter 10.16

PRELIMINARY HEARINGS

Sections

- 10.16.080 Discharge of defendant—F frivolous complaints.
- 10.16.100 Abstract of costs forwarded with transcript.
- 10.16.110 Statement of prosecuting attorney if no information filed—
Court action.
- 10.16.145 Witnesses—Recognizances with sureties.
- 10.16.150 Recognizances for minors.
- 10.16.160 Witnesses—Failure to furnish recognizance—Commitment—
Deposition—Discharge.

Magistrates: Chapter 2.20 RCW.

Municipal judges as magistrates: RCW 35.20.020, 35.20.250.

10.16.080 Discharge of defendant—F frivolous complaints. If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged, and if in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint. [Code 1881 § 1925; 1873 p 395 § 223; 1854 p 107 § 31; RRS § 1954.]

10.16.100 Abstract of costs forwarded with transcript. In all cases where any magistrate shall order a defendant to recognize for his or her appearance before a district or superior court, the magistrate shall forward with the papers in the case, an abstract of the costs that have accrued in the case, and such costs shall be subject to the final determination of the case. [1987 c 202 § 163; Code 1881 § 1937; 1873 p 397 § 236; 1854 p 109 § 44; RRS § 1966.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.16.110 Statement of prosecuting attorney if no information filed—Court action. It shall be the duty of the prosecuting attorney of the proper county to inquire into and make full examination of all the facts and circumstances connected with any case of preliminary examination, as provided by law, touching the commission of any offense wherein the offender shall be committed to jail, or become recognized or held to bail; and if the prosecuting attorney shall determine in any such case that an information ought not to be filed, he shall make, subscribe and file with the clerk of the court a statement in writing containing his reasons, in fact and in law, for not filing an information in such case, and such statement shall be filed at and during the session of court at which the offender shall be held for his

appearance: PROVIDED, That in such case such court may examine such statement, together with the evidence filed in the case, and if upon such examination the court shall not be satisfied with such statement, the prosecuting attorney shall be directed by the court to file the proper information and bring the case to trial. [1890 p 102 § 6; RRS § 2053. Formerly RCW 10.16.110 and 10.16.120.]

10.16.145 Witnesses—Recognizances with sureties. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his appearance at court. [Code 1881 § 1930; 1873 p 396 § 229; 1854 p 108 § 37; RRS § 1960. Formerly codified in RCW 10.16.140, part.]

Rules of court: This section probably superseded by CrR 6.13. See comment after CrR 6.13.

10.16.150 Recognizances for minors. When any minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such minor in a sum not exceeding fifty dollars which shall be valid and binding in law, notwithstanding the disability of minority. [1973 1st ex.s. c 154 § 19; Code 1881 § 1931; 1873 p 396 § 230; 1854 p 108 § 38; RRS § 1961.]

Rules of court: This section probably superseded by CrR 6.13. See comment after CrR 6.13.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

10.16.160 Witnesses—Failure to furnish recognizance—Commitment—Deposition—Discharge. All witnesses required to recognize with or without sureties shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such orders or be otherwise discharged according to law: PROVIDED, That when the magistrate is satisfied that any witness required to recognize with sureties is unable to comply with such order, the magistrate shall immediately take the deposition of such witness and discharge the witness from custody upon the witness' own recognizance. The testimony of the witness shall be reduced to writing by a district judge or some competent person under the judge's direction, and only the exact words of the witness shall be taken; the deposition, except the cross-examination, shall be in the narrative form, and upon the cross-examination the questions and answers shall be taken in full. The defendant must be present in person when the deposition is taken, and shall have an opportunity to cross-examine the witnesses; the defendant may make any objections to the admission of any part of the testimony, and all objections shall be noted by the district judge; but the district judge shall not decide as to the admissibility of the evidence, but shall take all the testimony offered by the witness. The deposition must be carefully read to the witness, and any corrections the witness may desire to make thereto shall be made in presence of the defendant by adding the same to the deposition as first

taken; it must be signed by the witness, certified by the district judge, and transmitted to the clerk of the superior court, in the same manner as depositions in civil actions. And if the witness is not present when required to testify in the case, either before the grand jury or upon the trial in the superior court, the deposition shall be submitted to the judge of such superior court, upon the objections noted by the district judge, and such judge shall suppress so much of said deposition as such judge shall find to be inadmissible, and the remainder of the deposition may be read as evidence in the case, either before the grand jury or upon the trial in the court. [1987 c 202 § 164; 1891 c 11 § 15; Code 1881 § 1932; 1877 p 203 § 8; 1873 p 396 § 232; 1854 p 108 § 39; RRS § 1962. Formerly RCW 10.16.160, 10.16.170, and 10.16.180.]

Rules of court: This section modified if not superseded by CrR 6.13. See comment after CrR 6.13.

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 10.19

BAIL AND APPEARANCE BONDS

Sections

- 10.19.040 Officers authorized to take recognizance and approve bail.
- 10.19.060 Certification and filing of recognizances.
- 10.19.065 Taking and entering recognizances.
- 10.19.090 Forfeiture, exoneration of recognizances—Judgment—Execution.
- 10.19.100 Stay of execution of forfeiture judgment—Bond.
- 10.19.105 Forfeiture judgment vacated on defendant's production—When.
- 10.19.110 Recognizances before district judge or magistrate—Forfeiture—Action.
- 10.19.120 Actions not barred by defect of form or formality.
- 10.19.140 Return of bond to surety, when.
- 10.19.150 Liability of surety, limitation.
- 10.19.160 Surrender of person under surety's bond.
- 10.19.170 Violent offenders—Reasons for release without bail.

Bail

arresting officer's duties regarding: RCW 10.31.030.

pending appeal to supreme court: RCW 10.73.040.

traffic offenses, nonresidents: RCW 46.64.035.

Fugitives, bail: Chapter 10.88 RCW.

Recognizance

for stay of execution: RCW 10.82.020, 10.82.025.

to keep the peace as incidence of conviction of crime: RCW 10.64.070, 10.64.075.

Recognizances relative to preliminary hearings: Chapter 10.16 RCW.

10.19.040 Officers authorized to take recognizance and approve bail. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and justify and approve the bail; he may administer an oath and examine the bail as to its sufficiency. [Code 1881 § 1034; 1873 p 229 § 214; 1854 p 114 § 78; RRS § 2087. FORMER PART OF SECTION: 1891 c 11 § 13; Code 1881 § 1927; 1873 p 395 § 225; 1854 p 108 § 33; RRS § 1957, now codified in RCW 10.16.070.]

10.19.060 Certification and filing of recognizances. Every recognizance taken by any peace officer must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and, from the

time of filing, it has the same effect as if taken in open court. [Code 1881 § 1035; 1873 p 230 § 215; 1854 p 114 § 79; RRS § 2088.]

10.19.065 Taking and entering recognizances. Recognizances in criminal proceedings may be taken in open court and entered on the order book. [Code 1881 § 1033; 1854 p 114 § 77; RRS § 2086.]

10.19.090 Forfeiture, exoneration of recognizances—Judgment—Execution. In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments. If the surety is not notified by the court in writing of the unexplained failure of the defendant to appear within thirty days of the date for appearance, then the forfeiture shall be null and void and the recognizance exonerated. [1986 c 322 § 2; Code 1881 § 1137; 1873 p 230 § 217; 1867 p 103 § 1; RRS § 2231.]

Severability—1986 c 322: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 322 § 6.]

10.19.100 Stay of execution of forfeiture judgment—Bond. The parties, or either of them, against whom such judgment may be entered in the superior or supreme courts, may stay said execution for sixty days by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment at the expiration of sixty days, unless the same shall be vacated before the expiration of that time. [1891 c 28 § 86; Code 1881 § 1138; 1873 p 242 § 281; 1867 p 103 § 2; RRS § 2232. FORMER PART OF SECTION: 1891 c 28 § 87; Code 1881 § 1139; 1867 p 103 § 3; RRS § 2233, now codified as RCW 10.19.105.]

10.19.105 Forfeiture judgment vacated on defendant's production—When. If a bond be given and execution stayed, as provided in RCW 10.19.100, and the person for whose appearance such recognizance was given shall be produced in court before the expiration of said period of sixty days, the judge may vacate such judgment upon such terms as may be just and equitable, otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors. [1891 c 28 § 87; Code 1881 § 1139; 1867 p 103 § 3; RRS § 2233. Formerly RCW 10.19.100, part.]

10.19.110 Recognizances before district judge or magistrate—Forfeiture—Action. All recognizances taken and forfeited before any district judge or magistrate, shall be forthwith certified to the clerk of the superior court of the county; and it shall be the duty of the prosecuting attorney to proceed at once by action against all the persons bound in such recognizances, and in all forfeited recognizances

whatever, or such of them as the prosecuting attorney may elect to proceed against. [1987 c 202 § 165; Code 1881 § 1166; 1873 p 230 § 215; 1854 p 128 § 175; RRS § 2234. FORMER PART OF SECTION: Code 1881 § 1936; 1873 p 397 § 235; 1863 p 390 § 216; 1859 p 141 § 185; 1854 p 109 § 43; RRS § 1965, now codified as RCW 10.16.190.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.19.120 Actions not barred by defect of form or formality. No action brought on any recognizance, bail, or appearance bond given in any criminal proceeding whatever shall be barred or defeated, nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety at the time when such default shall happen, or by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof at what court or before what district judge the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded. [1987 c 202 § 166; 1891 c 28 § 88; Code 1881 § 1167; 1854 p 129 § 176; RRS § 2235. FORMER PART OF SECTION: Code 1881 § 749; 1854 p 219 § 489; RRS § 777, now codified as RCW 19.72.170.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.19.140 Return of bond to surety, when. If a forfeiture has been entered against a person in a criminal case and the person is returned to custody or produced in court within twelve months from the forfeiture, then the full amount of the bond, less any and all costs determined by the court to have been incurred by law enforcement in transporting, locating, apprehending, or processing the return of the person to the jurisdiction of the court, shall be remitted to the surety if the surety was directly responsible for producing the person in court or directly responsible for apprehension of the person by law enforcement. [1986 c 322 § 3.]

Severability—1986 c 322: See note following RCW 10.19.090.

10.19.150 Liability of surety, limitation. The liability of the surety is limited to the amount of the bond when acting within the scope of the surety's duties in issuing the bond. [1986 c 322 § 4.]

Severability—1986 c 322: See note following RCW 10.19.090.

10.19.160 Surrender of person under surety's bond. The surety on the bond may return to custody a person in a criminal case under the surety's bond if the surrender is accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for the surrender. The surrender shall be made to the facility in which the person was originally held in custody or the county or city jail affiliated with the court issuing the warrant resulting in bail. [1986 c 322 § 5.]

Severability—1986 c 322: See note following RCW 10.19.090.

10.19.170 Violent offenders—Reasons for release without bail. Notwithstanding CrR 3.2, a court who releases a defendant arrested or charged with a violent offense as defined in RCW 9.94A.030 on the offender's

personal recognizance or personal recognizance with conditions must state on the record the reasons why the court did not require the defendant to post bail. [1996 c 181 § 1.]

Chapter 10.22

COMPROMISE OF MISDEMEANORS

Sections

- 10.22.010 When permitted—Exceptions.
- 10.22.020 Procedure—Costs.
- 10.22.030 Compromise in all other cases forbidden.

10.22.010 When permitted—Exceptions. When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in RCW 10.22.020, except when it was committed:

(1) By or upon an officer while in the execution of the duties of his office.

(2) Riotously;

(3) With an intent to commit a felony; or

(4) By one family or household member against another as defined in RCW 10.99.020(1) and was a crime of domestic violence as defined in *RCW 10.99.020(2). [1989 c 411 § 3; Code 1881 § 1040; 1854 p 115 § 84; RRS § 2126. FORMER PART OF SECTION: Code 1881 § 1935; 1873 p 397 § 234; 1854 p 109 § 42; RRS § 1964, now codified as RCW 10.16.135.]

***Reviser's note:** RCW 10.99.020 was amended by 1995 c 246 § 21, changing subsection (2) to subsection (3).

10.22.020 Procedure—Costs. In such case, if the party injured appear in the court in which the cause is pending at any time before the final judgment therein, and acknowledge, in writing, that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be discontinued and the defendant to be discharged. The reasons for making the order must be set forth therein and entered in the minutes. Such order is a bar to another prosecution for the same offense. [1891 c 28 § 63; Code 1881 §§ 1041, 1042; 1873 p 230 § 220; 1854 p 115 § 84; RRS § 2127.]

10.22.030 Compromise in all other cases forbidden. No offense can be compromised, nor can any proceedings for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter. [1891 c 28 § 64; Code 1881 § 1043; RRS § 2128.]

Chapter 10.25

JURISDICTION AND VENUE

Sections

- 10.25.065 Perjury committed outside state in statement, etc., authorized by RCW 9A.72.085—Punishable in county where related act, etc., occurred.
- 10.25.070 Change of venue—Procedure.
- 10.25.130 Costs when case transferred to another county.
- 10.25.140 Change of venue by selection in and moving jury from another county.

10.25.065 Perjury committed outside state in statement, etc., authorized by RCW 9A.72.085—Punishable in county where related act, etc., occurred. Perjury committed outside of the state of Washington in a statement, declaration, verification, or certificate authorized by RCW 9A.72.085 is punishable in the county in this state in which occurs the act, transaction, matter, action, or proceeding, in relation to which the statement, declaration, verification, or certification was given or made. [1981 c 187 § 4.]

10.25.070 Change of venue—Procedure. The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is satisfied the ground upon which the application is made does exist. [1891 c 28 § 7; Code 1881 § 1072; 1854 p 117 § 98; RRS § 2018.]

10.25.130 Costs when case transferred to another county. When a criminal case is transferred to another county pursuant to this chapter the county from which such case is transferred shall pay to the county in which the case is tried all costs accrued for per diem and mileage for jurors and witnesses and all other costs properly charged to a convicted defendant. [1961 c 303 § 2.]

10.25.140 Change of venue by selection in and moving jury from another county. When a change of venue is ordered and the court, upon motion to transfer a jury or in the absence of such motion, determines that it would be more economical to move the jury than to move the pending action and that justice will be served, a change of venue shall be accomplished by the selection of a jury in the county to which the venue would otherwise have been transferred and the selected jury moved to the county where the indictment or information was filed. [1981 c 205 § 1.]

Chapter 10.27

GRAND JURIES—CRIMINAL INVESTIGATIONS

Sections

10.27.010	Short title—Purpose.
10.27.020	Definitions.
10.27.030	Summoning grand jury.
10.27.040	Selection of grand jury members.
10.27.050	Special inquiry judge—Selection.
10.27.060	Discharge of panel, juror—Grounds.
10.27.070	Oath—Officers—Witnesses.
10.27.080	Persons authorized to attend—Restrictions on attorneys.
10.27.090	Secrecy enjoined—Exceptions—Use and availability of evidence.
10.27.100	Inquiry as to offenses—Duties—Investigation.
10.27.110	Duration of sessions—Extensions.
10.27.120	Self-incrimination—Right to counsel.
10.27.130	Self-incrimination—Refusal to testify or give evidence—Procedure.

10.27.140	Witnesses—Attendance.
10.27.150	Indictments—Issuance.
10.27.160	Grand jury report.
10.27.170	Special inquiry judge—Petition for order.
10.27.180	Special inquiry judge—Disqualification from subsequent proceedings.
10.27.190	Special inquiry judge—Direction to public attorney to participate in proceedings in another county—Procedure.

Interpreters—Legal proceedings: Chapter 2.42 RCW.

Juries: Chapter 2.36 RCW.

10.27.010 Short title—Purpose. This chapter shall be known as the criminal investigatory act of 1971 and is enacted on behalf of the people of the state of Washington to serve law enforcement in combating crime and corruption. [1971 ex.s. c 67 § 1.]

10.27.020 Definitions. For the purposes of this chapter:

(1) The term "court" shall mean any superior court in the state of Washington.

(2) The term "public attorney" shall mean the prosecuting attorney of the county in which a grand jury or special grand jury is impaneled; the attorney general of the state of Washington when acting pursuant to RCW 10.27.070(9) and, the special prosecutor appointed by the governor, pursuant to RCW 10.27.070(10), and their deputies or special deputies.

(3) The term "indictment" shall mean a written accusation found by a grand jury.

(4) The term "principal" shall mean any person whose conduct is being investigated by a grand jury or special inquiry judge.

(5) The term "witness" shall mean any person summoned to appear before a grand jury or special inquiry judge to answer questions or produce evidence.

(6) A "grand jury" consists of twelve persons, is impaneled by a superior court and constitutes a part of such court. The functions of a grand jury are to hear, examine and investigate evidence concerning criminal activity and corruption and to take action with respect to such evidence. The grand jury shall operate as a whole and not by committee.

(7) A "special inquiry judge" is a superior court judge designated by a majority of the superior court judges of a county to hear and receive evidence of crime and corruption. [1988 c 188 § 16; 1971 ex.s. c 67 § 2.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

10.27.030 Summoning grand jury. No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause. [1971 ex.s. c 67 § 3.]

10.27.040 Selection of grand jury members. Members of the grand jury shall be selected in the manner

provided in chapter 2.36 RCW. [1988 c 188 § 17; 1971 ex.s. c 67 § 4.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

10.27.050 Special inquiry judge—Selection. In every county a superior court judge as designated by a majority of the judges shall be available to serve as a special inquiry judge to hear evidence concerning criminal activity and corruption. [1971 ex.s. c 67 § 5.]

10.27.060 Discharge of panel, juror—Grounds. Neither the grand jury panel nor any individual grand juror may be challenged, but the court may:

(1) At any time before a grand jury is sworn discharge the panel and summon another if it finds that the original panel does not substantially conform to the requirements of chapter 2.36 RCW; or

(2) At any time after a grand juror is drawn, refuse to swear him, or discharge him after he has been sworn, upon a finding that he is disqualified from service pursuant to chapter 2.36 RCW, or incapable of performing his duties because of bias or prejudice, or guilty of misconduct in the performance of his duties such as to impair the proper functioning of the grand jury. [1971 ex.s. c 67 § 6.]

10.27.070 Oath—Officers—Witnesses. (1) When the grand jury is impaneled, the court shall appoint one of the jurors to be foreman, and also another of the jurors to act as foreman in case of the absence of the foreman.

(2) The grand jurors must be sworn pursuant to the following oath: "You, as grand jurors for the county of, do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge and you will submit things truly as they come to your knowledge, according to your charge the laws of this state and your understanding; you shall indict no person through envy, hatred, malice or political consideration; neither will you leave any person unindicted through fear, favor, affection, reward or the hope thereof or political consideration. The counsel of the state, his advice, and that of your fellows you shall keep secret."

(3) After a grand jury has been sworn, the court must deliver or cause to be delivered to each grand juror a printed copy of all the provisions of this chapter, and the court may give the grand jurors any oral or written instructions, or both, relating to the proper performance of their duties at any time it deems necessary or appropriate.

(4) The court shall appoint a reporter to record the proceedings before the grand jury or special inquiry judge, and shall swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090. In addition, the foreman of the grand jury may, in his discretion, select one of the grand jurors to act as secretary to keep records of the grand jury's business.

(5) The court, whenever necessary, shall appoint an interpreter, and shall swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(6) When a person held in official custody is a witness before a grand jury or special inquiry judge, a public servant, assigned to guard him during his appearance may accompany him. The court shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(7) Proceedings of a grand jury shall not be valid unless at least twelve of its members are present. The foreman or acting foreman of the grand jury shall conduct proceedings in an orderly manner and shall administer an oath or affirmation in the manner prescribed by law to any witness who shall testify before the grand jury.

(8) The legal advisers of a grand jury are the court and public attorneys, and a grand jury may not seek or receive legal advice from any other source. When necessary or appropriate, the court or public attorneys or both must instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions shall be recorded by the reporter.

(9)(a) Upon request of the prosecuting attorney of the county in which a grand jury or special inquiry judge is impaneled, the attorney general shall assist such prosecuting attorney in attending such grand jury or special inquiry judge.

(b) Whenever directed by the court, the attorney general shall supersede the prosecuting attorney in attending the grand jury and in which event the attorney general shall be responsible for the prosecution of any indictment returned by the grand jury.

(c) When the attorney general is conducting a criminal investigation pursuant to powers otherwise granted to him, he shall attend all grand juries or special inquiry judges in relation thereto and shall prosecute any indictments returned by a grand jury.

(10) After consulting with the court and receiving its approval, the grand jury may request the governor to appoint a special prosecutor to attend the grand jury. The grand jury shall in the request nominate three persons approved by the court. From those nominated, the governor shall appoint a special prosecutor, who shall supersede the prosecuting attorney and the attorney general and who shall be responsible for the prosecution of any indictments returned by the grand jury attended by him.

(11) A public attorney shall attend the grand jurors when requested by them, and he may do so on his own motion within the limitations of RCW 10.27.020(2), 10.27.070(9) and 10.27.070(10) hereof, for the purpose of examining witnesses in their presence, or of giving the grand jurors legal advice regarding any matter cognizable by them. He shall also, when requested by them, draft indictments and issue process for the attendance of witnesses.

(12) Subject to the approval of the court, the corporation counsel or city attorney for any city or town in the county where any grand jury has been convened may appear as a witness before the grand jury to advise the grand jury of any criminal activity or corruption within his jurisdiction. [1971 ex.s. c 67 § 7.]

10.27.080 Persons authorized to attend—Restrictions on attorneys. No person shall be present at sessions of the grand jury or special inquiry judge except the

witness under examination and his attorney, public attorneys, the reporter, an interpreter, a public servant guarding a witness who has been held in custody, if any, and, for the purposes provided for in RCW 10.27.170, any corporation counsel or city attorney. The attorney advising the witness shall only advise such witness concerning his right to answer or not answer any questions and the form of his answer and shall not otherwise engage in the proceedings. No person other than grand jurors shall be present while the grand jurors are deliberating or voting. Any person violating either of the above provisions may be held in contempt of court. [1971 ex.s. c 67 § 8.]

10.27.090 Secrecy enjoined—Exceptions—Use and availability of evidence. (1) Every member of the grand jury shall keep secret whatever he or any other grand juror has said, and how he or any other grand juror has voted, except for disclosure of indictments, if any, as provided in RCW 10.27.150.

(2) No grand juror shall be permitted to state or testify in any court how he or any other grand juror voted on any question before them or what opinion was expressed by himself or any other grand juror regarding such question.

(3) No grand juror, public or private attorney, city attorney or corporation counsel, reporter, interpreter or public servant who held a witness in custody before a grand jury or special inquiry judge, or witness, principal or other person shall disclose the testimony of a witness examined before the grand jury or special inquiry judge or other evidence received by it, except when required by the court to disclose the testimony of the witness examined before the grand jury or special inquiry judge for the purpose of ascertaining whether it is consistent with that of the witness given before the court, or to disclose his testimony given before the grand jury or special inquiry judge by any person upon a charge against such person for perjury in giving his testimony or upon trial therefor, or when permitted by the court in furtherance of justice.

(4) The public attorney shall have access to all grand jury and special inquiry judge evidence and may introduce such evidence before any other grand jury or any trial in which the same may be relevant.

(5) The court upon a showing of good cause may make any or all grand jury or special inquiry judge evidence available to any other public attorney, prosecuting attorney, city attorney or corporation counsel upon proper application and with the concurrence of the public attorney attending such grand jury. Any witness' testimony, given before a grand jury or a special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the court. The court may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence:

(a) when given or presented before a special inquiry judge, if doing so is in the furtherance of justice; or

(b) when given or presented before a grand jury, if the court finds that doing so is necessary to prevent an injustice and that there is no reason to believe that doing so would endanger the life or safety of any witness or his family. The

cost of any such transcript made available shall be borne by the applicant. [1971 ex.s. c 67 § 9.]

10.27.100 Inquiry as to offenses—Duties—Investigation. The grand jurors shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information filed in such case, and all other indictable offenses within the county which are presented to them by a public attorney or otherwise come to their knowledge. If a grand juror knows or has reason to believe that an indictable offense, triable within the county, has been committed, he shall declare such a fact to his fellow jurors who may begin an investigation. In such investigation the grand juror may be sworn as a witness. [1971 ex.s. c 67 § 10.]

10.27.110 Duration of sessions—Extensions. The length of time which a grand jury may sit after being convened shall not exceed sixty days. Before expiration of the sixty day period and any extensions, and upon showing of good cause, the court may order the grand jury panel extended for a period not to exceed sixty days. [1971 ex.s. c 67 § 11.]

10.27.120 Self-incrimination—Right to counsel. Any individual called to testify before a grand jury or special inquiry judge, whether as a witness or principal, if not represented by an attorney appearing with the witness before the grand jury or special inquiry judge, must be told of his privilege against self-incrimination. Such an individual has a right to representation by an attorney to advise him as to his rights, obligations and duties before the grand jury or special inquiry judge, and must be informed of this right. The attorney may be present during all proceedings attended by his client unless immunity has been granted pursuant to RCW 10.27.130. After immunity has been granted, such an individual may leave the grand jury room to confer with his attorney. [1971 ex.s. c 67 § 12.]

10.27.130 Self-incrimination—Refusal to testify or give evidence—Procedure. If in any proceedings before a grand jury or special inquiry judge, a person refuses, or indicates in advance a refusal, to testify or provide evidence of any other kind on the ground that he may be incriminated thereby, and if a public attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order. The hearing shall be subject to the provisions of RCW 10.27.080 and 10.27.090, unless the witness shall request that the hearing be public.

If, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but he shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to this section. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or

for offering false evidence to the grand jury. [1971 ex.s. c 67 § 13.]

10.27.140 Witnesses—Attendance. (1) Except as provided in this section, no person has the right to appear as a witness in a grand jury or special inquiry judge proceeding.

(2) A public attorney may call as a witness in a grand jury or special inquiry judge proceeding any person believed by him to possess information or knowledge relevant thereto and may issue legal process and subpoena to compel his attendance and the production of evidence.

(3) The grand jury or special inquiry judge may cause to be called as a witness any person believed by it to possess relevant information or knowledge. If the grand jury or special inquiry judge desires to hear any such witness who was not called by a public attorney, it may direct a public attorney to issue and serve a subpoena upon such witness and the public attorney must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the public attorney may apply to the court which impaneled the grand jury for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the court may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(4) The proceedings to summon a person and compel him to testify or provide evidence shall as far as possible be the same as proceedings to summon witnesses and compel their attendance. Such persons shall receive only those fees paid witnesses in superior court criminal trials. [1971 ex.s. c 67 § 14.]

10.27.150 Indictments—Issuance. After hearing, examining and investigating the evidence before it, a grand jury may, in its discretion, issue an indictment against a principal. A grand jury shall find an indictment only when from all the evidence at least three-fourths of the jurors are convinced that there is probable cause to believe a principal is guilty of a criminal offense. When an indictment is found by a grand jury the foreman or acting foreman shall present it to the court. [1971 ex.s. c 67 § 15.]

10.27.160 Grand jury report. The grand jury may prepare its conclusions, recommendations and suggestions in the form of a grand jury report. Such report shall be released to the public only upon a determination by a majority of the judges of the superior court of the county court that (1) the findings in the report deal with matters of broad public policy affecting the public interest and do not identify or criticize any individual; (2) the release of the report would be consistent with the public interest and further the ends of justice; and (3) release of the report would not prejudice any pending criminal investigation or trial. [1971 ex.s. c 67 § 16.]

10.27.170 Special inquiry judge—Petition for order. When any public attorney, corporation counsel or city attorney has reason to suspect crime or corruption, within the jurisdiction of such attorney, and there is reason to believe that there are persons who may be able to give material

testimony or provide material evidence concerning such suspected crime or corruption, such attorney may petition the judge designated as a special inquiry judge pursuant to RCW 10.27.050 for an order directed to such persons commanding them to appear at a designated time and place in said county and to then and there answer such questions concerning the suspected crime or corruption as the special inquiry judge may approve, or provide evidence as directed by the special inquiry judge. [1971 ex.s. c 67 § 17.]

10.27.180 Special inquiry judge—Disqualification from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify or provide evidence at such inquiry in response to an order, summons or subpoena. [1971 ex.s. c 67 § 18.]

10.27.190 Special inquiry judge—Direction to public attorney to participate in proceedings in another county—Procedure. Upon petition of a public attorney to the special inquiry judge that there is reason to suspect that there exists evidence of crime and corruption in another county, and with the concurrence of the special inquiry judge and prosecuting attorney of the other county, the special inquiry judge may direct the public attorney to attend and participate in special inquiry judge proceedings in the other county held to inquire into crime and corruption which relates to crime or corruption under investigation in the initiating county. The proceedings of such special inquiry judge may be transcribed, certified and filed in the county of the public attorney's jurisdiction at the expense of that county. [1971 ex.s. c 67 § 19.]

Chapter 10.29

STATE-WIDE SPECIAL INQUIRY JUDGE ACT

Sections

10.29.010	Short title.
10.29.020	Intent.
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10.29.040	Scope of investigation and proceeding—Request for additional authority.
10.29.050	Powers and duties of state-wide special inquiry judge.
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10.29.120	Advising county prosecuting attorney—Filing and prosecution of informations—Expenses of prosecutions.
10.29.130	Disqualification of judge from subsequent proceedings.
10.29.900	Severability—1980 c 146.

Organized crime advisory board: RCW 43.43.858.

Special inquiry judge: RCW 10.27.050, 10.27.170 through 10.27.190.

10.29.010 Short title. This chapter shall be known and may be cited as the State-wide Special Inquiry Judge Act. [1980 c 146 § 1.]

10.29.020 Intent. It is the intent of the legislature in enacting this chapter to strengthen and enhance the ability of the state to detect and eliminate organized criminal activity. [1980 c 146 § 2.]

10.29.030 Appointment of state-wide special inquiry judge—Procedure—Term—Confidentiality. (1) The organized crime advisory board shall have the authority, by a three-fourths vote at a regularly constituted meeting, to petition the Washington state supreme court for an order appointing a special inquiry judge as prescribed by this section. Such vote may be on its own motion or pursuant to a request from the prosecuting attorney of any county. In the event of such request from a prosecuting attorney the board shall vote on the question promptly. A petition filed under this section shall state the general crimes or wrongs to be inquired into and shall state the reasons why said crimes or wrongs are such that a state-wide special inquiry judge should be authorized to investigate. The supreme court may order the appointment of a state-wide special inquiry judge, in accordance with the petition, for a term of six calendar months. Upon petition by the special prosecutor, and with the approval of the majority of the members of the organized crime advisory board, the supreme court, by order, may extend the term of the state-wide special inquiry judge for three months. The term of the state-wide special inquiry judge may subsequently be extended in the same manner for additional three-month periods.

(2) If the petition is granted, the supreme court shall designate a judge of a superior court to act as a special inquiry judge. The supreme court shall ensure that sufficient visiting judges are made available to the superior court from which the appointment is made in order to compensate for any loss of judicial time.

(3) All of the information and data collected and processed by the organized crime advisory board and the petition filed with the supreme court shall be confidential and not subject to examination or publication pursuant to chapter 42.17 RCW (Initiative Measure No. 276), as now existing or hereafter amended, except as provided by rules of the supreme court of Washington in the case of the petition. [1980 c 146 § 3.]

10.29.040 Scope of investigation and proceeding—Request for additional authority. The scope of the investigation and of the special inquiry judge proceeding shall be limited to the general crimes and wrongs specified in the petition filed under RCW 10.29.030. The special prosecutor or special inquiry judge, however, may request authority to investigate other crimes by submitting a list of such crimes to the organized crime advisory board which may grant authorization to proceed by a three-fourths vote of the membership. [1980 c 146 § 4.]

10.29.050 Powers and duties of state-wide special inquiry judge. A state-wide special inquiry judge shall have the following powers and duties:

(1) To hear and receive evidence of crime and corruption.

(2) To appoint a reporter to record the proceedings; and to swear the reporter not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(3) Whenever necessary, to appoint an interpreter, and to swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(4) When a person held in official custody is a witness before a state-wide special inquiry judge, a public servant, assigned to guard him during his appearance may accompany him. The state-wide special inquiry judge shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(5) To cause to be called as a witness any person believed by him to possess relevant information or knowledge. If the state-wide special inquiry judge desires to hear any such witness who was not called by the special prosecutor, it may direct the special prosecutor to issue and serve a subpoena upon such witness and the special prosecutor must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the special prosecutor may apply to the state-wide special inquiry judge for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the state-wide special inquiry judge may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(6) Upon a showing of good cause may make available any or all evidence obtained to any other public attorney, prosecuting attorney, city attorney, or corporation counsel upon proper application and with the concurrence of the special prosecutor. Any witness' testimony, given before a state-wide special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the state-wide special inquiry judge. The state-wide special inquiry judge may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence when given or presented before a special inquiry judge, if doing so is in the furtherance of justice.

(7) Have authority to perform such other duties as may be required to effectively implement this chapter, in accord with rules adopted by the supreme court relating to these proceedings.

(8) Have authority to hold in contempt of court any person who shall disclose the name or testimony of a witness examined before a state-wide special inquiry judge except when required by a court to disclose the testimony given before such state-wide special inquiry judge in a subsequent criminal proceeding. [1980 c 146 § 5.]

10.29.060 Disclosures by witness—Penalty. Any witness who shall disclose the fact that he or she has been called as a witness before a state-wide special inquiry judge or who shall disclose the nature of the testimony given shall be guilty of a misdemeanor. [1980 c 146 § 6.]

10.29.070 Rules. The supreme court shall develop and adopt rules to govern the procedures of a state-wide special inquiry judge proceeding including rules assuring the

confidentiality of all proceedings, testimony, and the identity of persons called as witnesses. The adoption of such rules shall be subject to the approval of such rules by the senate and house judiciary committees. [1980 c 146 § 7.]

10.29.080 Special prosecutor—Selection—Qualifications—Removal. If the supreme court appoints a state-wide special inquiry judge under RCW 10.29.030, the organized crime advisory board shall submit to the governor the name of an individual who, with the consent of the governor, shall serve as special prosecutor for the state-wide special inquiry judge proceeding. Any individual whose name is submitted under this section to the governor shall be licensed to practice law in the state of Washington and shall have at least five years' professional experience as one or more of the following: (1) Prosecuting attorney; (2) deputy prosecuting attorney; (3) United States attorney; or (4) assistant United States attorney. No such person shall have resided during the five years immediately preceding the appointment in a county in which the state-wide special inquiry judge will likely be required to investigate crimes. A special prosecutor appointed under this section shall be removed only upon a majority recommendation of the organized crime advisory board and the consent of the governor. [1980 c 146 § 8.]

10.29.090 Operating budget—Contents—Audit. Within ten days of his or her appointment, a special prosecutor selected under this chapter shall submit to the organized crime advisory board an operating budget to fund the activities of his or her office. The budget may include, but shall not be limited to, funds for the hiring of assistant special prosecutors, investigators, and clerical staff. Upon the approval of the budget by a majority of the members of the board, the costs and expenses of the prosecutor's operating budget shall be paid for by the state out of the organized crime prosecution revolving fund. Further operating budgets shall be proposed, approved, and funded pursuant to this section if the term of a state-wide special inquiry judge is extended pursuant to RCW 10.29.030.

Vouchers and other budget and accounting records of a special inquiry judge proceeding including such records of the special prosecutor shall be subject to audit by the state auditor but shall not be public records within the meaning of chapter 42.17 RCW. [1980 c 146 § 9.]

Organized crime prosecution revolving fund: RCW 43.43.866.

10.29.100 Vacancy in office. Whenever a state-wide special inquiry judge or special prosecutor appointed under this chapter dies or in any other way is rendered incapable of continuing the duties of his or her office, a successor shall be appointed to serve for the remainder of the judge's or prosecutor's term in the manner provided for by RCW 10.29.030 and 10.29.080 for the appointment of state-wide special inquiry judges and special prosecutors. [1980 c 146 § 10.]

10.29.110 Duties of special prosecutor or designee. The special prosecutor or his designee shall:

(1) Attend all proceedings of the state-wide special inquiry judge;

(2) Have the authority to issue subpoenas for witnesses state-wide;

(3) Examine witnesses, present evidence, draft reports as directed by the state-wide special inquiry judge, and draft and file informations under RCW 10.29.120. [1980 c 146 § 11.]

10.29.120 Advising county prosecuting attorney—Filing and prosecution of informations—Expenses of prosecutions. (1) The special prosecutor shall advise the county prosecuting attorney in any affected county of the nature of the state-wide special inquiry judge investigation and of any informations arising from such proceedings unless such disclosures will create a substantial likelihood of a conflict of interest for the county prosecuting attorney.

(2) The special prosecutor may file and prosecute an information in the county where proper venue lies, after having advised the county prosecuting attorney as provided in this section and determined that such prosecuting attorney does not intend to do so, or pursuant to an agreement between them that the special prosecutor shall do so.

(3) Informations filed and prosecuted pursuant to this chapter shall meet the requirements of chapter 10.37 RCW.

(4) The expenses of prosecutions initiated and maintained by the special prosecutor shall be paid as part of the state-wide special inquiry judge program as provided in RCW 10.29.090. [1980 c 146 § 12.]

10.29.130 Disqualification of judge from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify, or provide evidence at such inquiry in response to an order, summons, or subpoena. [1980 c 146 § 13.]

10.29.900 Severability—1980 c 146. If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 146 § 19.]

Chapter 10.31

WARRANTS AND ARRESTS

Sections

10.31.030	Service—How—Warrant not in possession, procedure—Bail.
10.31.040	Officer may break and enter.
10.31.050	Officer may use force.
10.31.060	Arrest by telegraph or teletype.
10.31.100	Arrest without warrant.

Rules of court: Warrant upon indictment or information—CrR 2.2.

Search and seizure: Chapter 10.79 RCW.

10.31.030 Service—How—Warrant not in possession, procedure—Bail. The officer making an arrest must inform the defendant that he acts under authority of a warrant, and must also show the warrant: PROVIDED, That if the officer does not have the warrant in his possession at the time of arrest he shall declare that the warrant does presently exist and will be shown to the defendant as soon as

possible on arrival at the place of intended confinement: PROVIDED, FURTHER, That any officer making an arrest under this section shall, if the person arrested wishes to deposit bail, take such person directly and without delay before a judge or before an officer authorized to take the recognizance and justify and approve the bail, including the deposit of a sum of money equal to bail. Bail shall be the amount fixed by the warrant. Such judge or authorized officer shall hold bail for the legal authority within this state which issued such warrant if other than such arresting authority. [1970 ex.s. c 49 § 3; 1891 c 28 § 43; Code 1881 § 1030; 1873 p 229 § 210; 1854 p 114 § 74; RRS § 2083.]

Severability—1970 ex.s. c 49: See note following RCW 9.69.100.

Bail: Chapter 10.19 RCW.

10.31.040 Officer may break and enter. To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or any other inclosure, if, after notice of his office and purpose, he be refused admittance. [Code 1881 § 1170; 1854 p 129 § 179; RRS § 2082.]

10.31.050 Officer may use force. If after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest. [Code 1881 § 1031; 1873 p 229 § 211; 1854 p 114 § 75; RRS § 2084.]

10.31.060 Arrest by telegraph or teletype. Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any justice of the supreme court, or any judge of either the court of appeals or superior court may indorse thereon an order signed by him and authorizing the service thereof by telegraph or teletype, and thereupon such warrant and order may be sent by telegraph or teletype to any marshal, sheriff, constable or policeman, and on the receipt of the telegraphic or teletype copy thereof by any such officer, he shall have the same authority and be under the same obligations to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest, with the proper direction for the service thereof, duly indorsed thereon, had been placed in his hands, and the said telegraphic or teletype copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original; but prior to indictment and conviction, no such order shall be made by any officer, unless in his judgment there is probable cause to believe the said accused person or persons guilty of the offense charged: PROVIDED, That the making of such order by any officer aforesaid, shall be prima facie evidence of the regularity thereof, and of all the proceedings prior thereto. The original warrant and order, or a copy thereof, certified by the officer making the order, shall be preserved in the telegraph office or police agency from which the same is sent, and in telegraphing or teletyping the same, the original or the said certified copy may be used. [1971 c 81 § 48; 1967 c 91 § 1; Code 1881 § 2357; 1865 p 75 § 16; RRS § 2081. Formerly RCW 10.31.060 through 10.31.090.]

10.31.100 Arrest without warrant. A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (10) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

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

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

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

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

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.12.025 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(10) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(11) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(12) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police officer acts in good faith and without malice. [1997 c 66 § 10; 1996 c 248 § 4. Prior: 1995 c 246 § 20; 1995 c 184 § 1; 1995 c 93 § 1; prior: 1993 c 209 § 1; 1993 c 128 § 5; 1988 c 190 § 1; prior: 1987 c 280 § 20; 1987 c 277 § 2; 1987 c 154 § 1; 1987 c 66 § 1; prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

Severability—1995 c 246: See note following RCW 26.50.010.

Effective date—1995 c 184: "This act shall take effect January 1, 1996. Prior to that date, law enforcement agencies, prosecuting authorities, and local governments are encouraged to develop and adopt arrest and charging guidelines regarding criminal trespass." [1995 c 184 § 2.]

Severability—Effective date—1993 c 128: See RCW 9A.50.901 and 9A.50.902

Severability—1987 c 280: See RCW 10.14.900.

Effective date—Severability—1984 c 263: See RCW 26.50.901, 26.50.902.

Arrest procedure involving traffic violations: Chapter 46.64 RCW.

Domestic violence, peace officers—Immunity: RCW 26.50.140.

Uniform Controlled Substances Act: Chapter 69.50 RCW.

Chapter 10.34

FUGITIVES OF THIS STATE

Sections

10.34.010 Officer may arrest defendant in any county.

10.34.020 Escape—Retaking prisoner—Authority.

10.34.030 Escape—Retaking in foreign state—Extradition agents.

Escape: Chapter 9A.76 RCW.

Extradition and fresh pursuit: Chapter 10.88 RCW.

Return of parole violators from outside state: RCW 9.95.280 through 9.95.300.

10.34.010 Officer may arrest defendant in any county. If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority as in his own county. [Code 1881 § 1922; 1873 p 394 § 220; 1854 p 107 § 28; RRS § 1950.]

10.34.020 Escape—Retaking prisoner—Authority. If a person arrested escape or be rescued, the person from whose custody he made his escape, or was rescued, may immediately pursue and retake him at any time, and within any place in the state. To retake the person escaping or rescued, the person pursuing has the same power to command assistance as given in cases of arrest. [Code 1881 § 1032; 1873 p 229 § 212; 1854 p 114 § 76; RRS § 2085.]

10.34.030 Escape—Retaking in foreign state—Extradition agents. The governor may appoint agents to make a demand upon the executive authority of any state or territory for the surrender of any fugitive from justice, or any other person charged with a felony or any other crime in this state. Whenever an application shall be made to the governor for the appointment of an agent he may require the official submitting the same to provide whatever information is necessary prior to approval of the application. [1993 c 442 § 1; 1967 c 91 § 2; 1891 c 28 § 98; Code 1881 § 971; 1873 p 217 § 157; 1854 p 102 § 5; RRS § 2241.]

Effective date—1993 c 442: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 442 § 2.]

**Chapter 10.37
ACCUSATIONS AND THEIR REQUISITES**

- Sections
- 10.37.010 Pleadings required in criminal proceedings.
 - 10.37.015 Charge by information or indictment—Exceptions.
 - 10.37.040 Indictment—Form.
 - 10.37.050 Indictment or information—Sufficiency.
 - 10.37.052 Indictment or information—Requisites.
 - 10.37.054 Indictment or information—Certainty.
 - 10.37.056 Indictment or information—Certain defects or imperfections deemed immaterial.
 - 10.37.060 Indictment or information—Separation into counts—Consolidation.
 - 10.37.070 Animals—Description of.
 - 10.37.080 Forgery—Description of instrument.
 - 10.37.090 Injury to person or intention concerning.
 - 10.37.100 Judgment, how pleaded.
 - 10.37.110 Larceny or embezzlement—Specification.
 - 10.37.120 Libel—Innuendos—Publication.
 - 10.37.130 Obscene literature—Description.
 - 10.37.140 Perjury—Subornation of perjury—Description of matter.
 - 10.37.150 Presumptions of law need not be stated.
 - 10.37.160 Statute—Exact words need not be used.
 - 10.37.170 Statute, private—Description.
 - 10.37.190 Words and phrases—How used.

*Rules of court: Rights of dependents—CrR 3.1 through 3.6.
Ownership of property, proof of: RCW 10.58.060.*

10.37.010 Pleadings required in criminal proceedings. No pleading other than an indictment, information or complaint shall be required on the part of the state in any criminal proceedings in any court of the state, and when such pleading is in the manner and form as provided by law the defendant shall be required to plead thereto as prescribed by law without any further action or proceedings of any kind on the part of the state. [1925 ex.s. c 150 § 3; RRS § 2050-1. FORMER PARTS OF SECTION: (i) 1927 c 103 § 1; Code 1881 § 764; RRS § 2023, now codified as RCW 10.37.015. (ii) 1909 c 87 § 1; 1891 c 117 § 1; 1890 p 100 § 1; RRS § 2024, now codified as RCW 10.37.026. (iii) 1891 c 28 § 19; Code 1881 § 1003; 1873 p 224 § 186; 1869 p 240 § 181; RRS § 2054, now codified as RCW 10.37.025.]

10.37.015 Charge by information or indictment—Exceptions. No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor or gross misdemeanor before a district or municipal judge, or before a court martial. [1987 c 202 § 167; 1927 c 103 § 1; Code 1881 § 764; RRS § 2023. Formerly RCW 10.37.010, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.37.040 Indictment—Form. The indictment may be substantially in the following form:

State of Washington	}	Superior Court of
v.		the State of
A. B.		Washington for the County of

A. B. is accused by the grand jury of the , by this indictment, of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson,

manslaughter, or the like; or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law], committed as follows:

The said A. B. on the day of , 19. . . , in the county of , aforesaid, [here set forth the act charged as a crime.]

Dated at , in the county aforesaid, the day of , A.D. 19. . . .

(Signed) C. D., Prosecuting Attorney.
(Indorsed) A true bill.
(Signed) E. F., Foreman of the Grand Jury.

[1891 c 28 § 21; Code 1881 § 1005; 1873 p 225 § 188; 1869 p 240 § 183; RRS § 2056.]

10.37.050 Indictment or information—Sufficiency. The indictment or information is sufficient if it can be understood therefrom—

(1) That it is entitled in a court having authority to receive [it;]

(2) That it was found by a grand jury of the county in which the court was held;

(3) That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown;

(4) That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein;

(5) That the crime was committed at some time previous to the finding of the indictment or filing of the information, and within the time limited by law for the commencement of an action therefor;

(6) That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

(7) The act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case. [1891 c 28 § 29; Code 1881 § 1014; 1873 p 226 § 197; 1869 p 242 § 192; RRS § 2065. FORMER PARTS OF SECTION: (i) 1891 c 28 § 20; Code 1881 § 1004; 1873 p 224 § 187; 1869 p 240 § 182; RRS § 2055, now codified as RCW 10.37.052. (ii) 1891 c 28 § 22; Code 1881 § 1006; 1873 p 225 § 189; 1854 p 112 § 61; 1869 p 241 § 184; RRS § 2057, now codified as RCW 10.37.054. (iii) 1891 c 28 § 30; Code 1881 § 1015; 1873 p 227 § 198; 1869 p 242 § 193; RRS § 2066, now codified as RCW 10.37.056.]

10.37.052 Indictment or information—Requisites. The indictment or information must contain—

(1) The title of the action, specifying the name of the court to which the indictment or information is presented and the names of the parties;

(2) A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended. [1891 c 28 § 20; Code 1881 §

1004; 1873 p 224 § 187; 1869 p 240 § 182; RRS § 2055. Formerly RCW 10.37.050, part.]

10.37.054 Indictment or information—Certainty.

The indictment or information must be direct and certain as it regards:

- (1) The party charged;
- (2) The crime charged; and
- (3) The particular circumstances of the crime charged, when they are necessary to constitute a complete crime. [1891 c 28 § 22; Code 1881 § 1006; 1873 p 225 § 189; 1869 p 241 § 184; 1854 p 112 § 61; RRS § 2057. Formerly RCW 10.37.050, part.]

10.37.056 Indictment or information—Certain defects or imperfections deemed immaterial. No indictment or information is insufficient, nor can the trial, judgment or other proceedings thereon be affected, by reason of any of the following matters, which were formerly deemed defects or imperfections:

- (1) For want of an allegation of the time or place of any material fact, when the time and place have been once stated;
- (2) For the omission of any of the following allegations, namely: "With force and arms," "contrary to the form of the statute or the statutes," or "against the peace and dignity of the state;"
- (3) For the omission to allege that the grand jury was impaneled, sworn, or charged;
- (4) For any surplusage or repugnant allegation or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged; nor
- (5) For any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits. [1891 c 28 § 30; Code 1881 § 1015; 1873 p 227 § 198; 1869 p 242 § 193; RRS § 2066. Formerly RCW 10.37.050, part.]

Ownership of property, proof of: RCW 10.58.060.

10.37.060 Indictment or information—Separation into counts—Consolidation. When there are several charges against any person, or persons, for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments or informations the whole may be joined in one indictment, or information, in separate counts; and, if two or more indictments are found, or two or more informations filed, in such cases, the court may order such indictments or informations to be consolidated. [1925 ex.s. c 109 § 1; 1891 c 28 § 24; Code 1881 § 1008; 1873 p 225 § 191; 1869 p 241 § 186; RRS § 2059.]

10.37.070 Animals—Description of. When the crime involves the taking of or injury to an animal the indictment or information is sufficiently certain in that respect if it describes the animal by the common name of its class. [1891 c 28 § 26; Code 1881 § 1011; 1873 p 226 § 194; 1869 p 241 § 189; RRS § 2062.]

Crimes relating to animals: Chapter 9.08 RCW.

[Title 10 RCW—page 26]

Larceny: Chapter 9A.56 RCW.

10.37.080 Forgery—Description of instrument.

When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial. [1891 c 28 § 35; Code 1881 § 1020; 1873 p 227 § 203; 1854 p 113 § 68; RRS § 2071.]

Forgery: Chapter 9A.60 RCW.

10.37.090 Injury to person or intention concerning.

When the crime involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material. [Code 1881 § 1010; 1873 p 226 § 193; 1869 p 241 § 188; RRS § 2061.]

10.37.100 Judgment, how pleaded. In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state in the indictment or information the facts conferring jurisdiction; but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial. [1891 c 28 § 32; Code 1881 § 1017; 1873 p 227 § 200; 1869 p 242 § 195; 1854 p 112 § 65; RRS § 2068.]

10.37.110 Larceny or embezzlement—Specification.

In an indictment or information for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination or kind thereof. [1891 c 28 § 38; Code 1881 § 1023; RRS § 2074.]

Larceny: Chapter 9A.56 RCW.

Ownership of property, proof of: RCW 10.58.060.

10.37.120 Libel—Innuendos—Publication. An indictment or information for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial. [1891 c 28 § 34; Code 1881 § 1019; 1873 p 227 § 202; 1869 p 243 § 197; RRS § 2070.]

Libel: Chapter 9.58 RCW.

10.37.130 Obscene literature—Description. An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet,

picture, print, card, paper, or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof. [1891 c 28 § 39; Code 1881 § 1024; RRS § 2075.]

Obscenity: Chapter 9.68 RCW.

10.37.140 Perjury—Subornation of perjury—Description of matter. In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. [1891 c 28 § 36; Code 1881 § 1021; 1873 p 228 § 204; 1869 p 243 § 199; 1854 p 112 § 67; RRS § 2072.]

Perjury: Chapter 9A.72 RCW.

10.37.150 Presumptions of law need not be stated. Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment or information. [1891 c 28 § 31; Code 1881 § 1016; 1873 p 227 § 199; 1869 p 242 § 194; RRS § 2067.]

10.37.160 Statute—Exact words need not be used. Words used in a statute to define a crime need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used. [1891 c 28 § 28; Code 1881 § 1013; 1873 p 226 § 196; 1869 p 241 § 191; RRS § 2064.]

10.37.170 Statute, private—Description. In pleading a private statute, or right derived therefrom, it is sufficient to refer, in the indictment or information, to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof. [1891 c 28 § 33; Code 1881 § 1018; 1873 p 227 § 201; 1869 p 243 § 196; 1854 p 112 § 66; RRS § 2069.]

10.37.190 Words and phrases—How used. The words used in an indictment or information must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. [1891 c 28 § 27; Code 1881 § 1012; 1873 p 227 § 195; 1869 p 241 § 190; RRS § 2063.]

**Chapter 10.40
ARRAIGNMENT**

Sections

- 10.40.050 Entry and use of true name.
- 10.40.060 Pleading to arraignment.
- 10.40.070 Motion to set aside indictment.
- 10.40.075 Motion to set aside indictment—Grounds not allowed, when.
- 10.40.090 Sustaining motion—Effect of.
- 10.40.100 Overruling motion—Pleading over.

(1998 Ed.)

- 10.40.110 Demurrer to indictment or information.
- 10.40.120 Sustaining demurrer—When final.
- 10.40.125 Sustaining demurrer, etc.—When not final.
- 10.40.140 Overruling demurrer—Pleading over.
- 10.40.170 Plea of guilty.
- 10.40.180 Plea of not guilty.
- 10.40.190 Refusal to answer.
- 10.40.200 Deportation of aliens upon conviction—Advisement—Legislative intent.

Rules of court: Arraignment—CrR 4.1.

10.40.050 Entry and use of true name. If he alleges that another name is his true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted or informed against. [1891 c 28 § 49; Code 1881 § 1065; 1873 p 232 § 227; 1854 p 116 § 91; RRS § 2097.]

Action on discovery of true name: RCW 10.46.060.

10.40.060 Pleading to arraignment. In answer to the arraignment, the defendant may move to set aside the indictment or information, or he may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he demand it. [1891 c 28 § 50; Code 1881 § 1045; RRS § 2098.]

10.40.070 Motion to set aside indictment. The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained:

(1) When any person, other than the grand jurors, was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required or permitted by law;

(2) If the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law. [1983 c 3 § 12; 1957 c 10 § 1; Code 1881 § 1046; RRS § 2099. FORMER PART OF SECTION: Code 1881 § 1047; RRS § 2100, now codified as RCW 10.40.075.]

10.40.075 Motion to set aside indictment—Grounds not allowed, when. The ground of the motion to set aside the indictment mentioned in the fourth subdivision of RCW 10.40.070 is not allowed to a defendant who has been held to answer before indictment. [Code 1881 § 1047; RRS § 2100. Formerly RCW 10.40.070, part.]

10.40.090 Sustaining motion—Effect of. An order to set aside the indictment or information as provided in this chapter shall be no bar to a future prosecution for the same offense. [1891 c 28 § 54; Code 1881 § 1050; RRS § 2104.]

10.40.100 Overruling motion—Pleading over. If the motion to set aside the indictment [or information] be denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. [1891 c 28 § 52; Code 1881 § 1048; RRS § 2102.]

10.40.110 Demurrer to indictment or information.

The defendant may demur to the indictment or information when it appears upon its face either—

- (1) That it does not substantially conform to the requirements of this code;
- (2) [That] more than one crime is charged;
- (3) That the facts charged do not constitute a crime;
- (4) That the indictment or information contains any matter which, if true, would constitute a defense or other legal bar to the action. [1891 c 28 § 55; Code 1881 § 1051; RRS § 2105.]

10.40.120 Sustaining demurrer—When final. If the demurrer is sustained because the indictment or information contains matter which is a legal defense or bar to the action, the judgment shall be final, and the defendant must be discharged. [1891 c 28 § 56; Code 1881 § 1052; RRS § 2106. FORMER PART OF SECTION: 1891 c 28 § 61; Code 1881 § 1060; RRS § 2114, now codified as RCW 10.40.125.]

10.40.125 Sustaining demurrer, etc.—When not final. The judgment for the defendant on a demurrer to the indictment or information, except where it is otherwise provided, or for an objection taken at the trial to its form or substance, or for variance between the indictment or information and the proof, shall not bar another prosecution for the same offense. [1891 c 28 § 61; Code 1881 § 1060; RRS § 2114. Formerly RCW 10.40.120, part.]

10.40.140 Overruling demurrer—Pleading over. If the demurrer is overruled the defendant has a right to put in a plea. If he fails to do so, judgment may be rendered against him on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense. [Code 1881 § 1053; RRS § 2107.]

10.40.170 Plea of guilty. The plea of guilty can only be put in by the defendant himself in open court. [Code 1881 § 1056; RRS § 2110. FORMER PART OF SECTION: Code 1881 § 1057; RRS § 2111, now codified as RCW 10.40.175.]

10.40.180 Plea of not guilty. The plea of not guilty is a denial of every material allegation in the indictment or information; and all matters of fact may be given in evidence under it, except a former conviction or acquittal. [1891 c 28 § 59; Code 1881 § 1058; RRS § 2112.]

10.40.190 Refusal to answer. If the defendant fail or refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered by the court. [1891 c 28 § 62; Code 1881 § 1061; 1873 p 232 § 224; 1854 p 116 § 88; RRS § 2115.]

10.40.200 Deportation of aliens upon conviction—Advisement—Legislative intent. (1) The legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty

is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is further the intent of the legislature that at the time of the plea no defendant be required to disclose his or her legal status to the court.

(2) Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall determine that the defendant has been advised of the following potential consequences of conviction for a defendant who is not a citizen of the United States: Deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. A defendant signing a guilty plea statement containing the advisement required by this subsection shall be presumed to have received the required advisement. If, after September 1, 1983, the defendant has not been advised as required by this section and the defendant shows that conviction of the offense to which the defendant pleaded guilty may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty and enter a plea of not guilty. Absent a written acknowledgement by the defendant of the advisement required by this subsection, the defendant shall be presumed not to have received the required advisement.

(3) With respect to pleas accepted prior to September 1, 1983, it is not the intent of the legislature that a defendant's failure to receive the advisement required by subsection (2) of this section should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid. [1983 c 199 § 1.]

Notice to courts—Rules—Forms: "The office of the administrator for the courts shall notify all courts of the requirements contained in RCW 10.40.200. The judicial council shall recommend to the supreme court appropriate court rules to ensure compliance with the requirements of RCW 10.40.200. Until court rules are promulgated, the office of the administrator for the courts shall develop and distribute forms necessary for the courts to comply with RCW 10.40.200." [1983 c 199 § 2.]

Effective date—1983 c 199 § 1: "Section 1 of this act shall take effect on September 1, 1983." [1983 c 199 § 3.]

Chapter 10.43**FORMER ACQUITTAL OR CONVICTION**

Sections

- 10.43.020 Offense embraces lower degree and included offenses.
- 10.43.030 Conviction or acquittal in other county.
- 10.43.040 Foreign conviction or acquittal.
- 10.43.050 Acquittal, when a bar.

Discharge of codefendant as bar to further prosecution: RCW 10.46.110.

Double jeopardy. State Constitution Art. 1 § 9.

10.43.020 Offense embraces lower degree and included offenses. When the defendant has been convicted or acquitted upon an indictment or information of an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein. [1891 c 28 § 74; Code 1881 § 1096; 1873 p 238 § 257; 1854 p 120 § 121; RRS § 2166.]

Bar as to prosecution for same crime in another degree, or attempt: RCW 10.43.050.

10.43.030 Conviction or acquittal in other county. Whenever, upon the trial of any person for a crime, it shall appear that the defendant has already been acquitted or convicted upon the merits, of the same crime, in a court having jurisdiction of such offense in another county of this state, such former acquittal or conviction is a sufficient defense. [1909 c 249 § 20; RRS § 2272.]

10.43.040 Foreign conviction or acquittal. Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, upon a criminal prosecution under the laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense. [1909 c 249 § 19; RRS § 2271.]

10.43.050 Acquittal, when a bar. No order of dismissal or directed verdict of not guilty on the ground of a variance between the indictment or information and the proof, or on the ground of any defect in such indictment or information, shall bar another prosecution for the same offense. Whenever a defendant shall be acquitted or convicted upon an indictment or information charging a crime consisting of different degrees, he cannot be proceeded against or tried for the same crime in another degree, nor for an attempt to commit such crime, or any degree thereof. [1909 c 249 § 64; Code 1881 § 769; RRS § 2316.]

Offense embraces lower degree and included offenses: RCW 10.43.020.

Ownership of property—Proof of: RCW 10.58.060.

Chapter 10.46

SUPERIOR COURT TRIAL

Sections

10.46.020	Trial docket.
10.46.060	True name inserted in proceedings.
10.46.070	Conduct of trial—Generally.
10.46.080	Continuances.
10.46.085	Continuances not permitted in certain cases.
10.46.110	Discharging defendant to give evidence.
10.46.190	Liability of convicted person for costs—Jury fee.
10.46.200	Costs allowed to acquitted or discharged defendant.
10.46.210	Taxation of costs on acquittal or discharge—Generally— Frivolous complaints.
10.46.220	Cost bills in felony cases—Certification.
10.46.230	Cost bills in felony cases—Payment.

Criminal rules for superior court: Rules of court: Superior Court Criminal Rules (CrR).

Superior court rules: State Constitution Art. 4 § 24.

10.46.020 Trial docket. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments and informations pending according to the date of their filing, specifying opposite to the title of each action whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail; and shall, in like manner, enter therein all indictments and informations on which issues of fact are joined, all cases brought to the court on change of venue from other counties, and all cases pending upon appeal from inferior courts. [1891 c 28 § 65; Code 1881 § 1044; 1873 p 231 § 222; 1854 p 115 § 86; RRS § 2134.]

10.46.060 True name inserted in proceedings. When a defendant is designated in the indictment or information by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted or informed against by the name mentioned in the indictment or information. [1891 c 28 § 23; Code 1881 § 1007; 1873 p 225 § 190; 1869 p 241 § 185; RRS § 2058.]

True name: RCW 10.40.050.

10.46.070 Conduct of trial—Generally. The court shall decide all questions of law which shall arise in the course of the trial, and the trial shall be conducted in the same manner as in civil actions. [1891 c 28 § 70; Code 1881 § 1088; 1873 p 237 § 249; 1854 p 119 § 111; RRS § 2158. FORMER PART OF SECTION: 1891 c 28 § 66, part; Code 1881 § 1078; 1873 p 236 § 239; 1854 p 118 § 101; RRS § 2137, part, now codified as RCW 10.49.020.]

Rules of court: This section superseded, in part, by CrR 6. See comment preceding CrR 6.1.

10.46.080 Continuances. A continuance may be granted in any case on the ground of the absence of evidence on the motion of the defendant supported by affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it; and also the name and place of residence of the witness or witnesses; and the substance of the evidence expected to be obtained, and if the prosecuting attorney admit that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper the continuance shall not be granted. [Code 1881 § 1077; 1877 p 206 § 7; RRS § 2135.]

10.46.085 Continuances not permitted in certain cases. When a defendant is charged with a crime which constitutes a violation of RCW 9A.64.020 or chapter 9.68, 9.68A, or 9A.44 RCW, and the alleged victim of the crime is a person under the age of eighteen years, neither the defendant nor the prosecuting attorney may agree to extend the originally scheduled trial date unless the court within its discretion finds that there are substantial and compelling reasons for a continuance of the trial date and that the benefit of the postponement outweighs the detriment to the

victim. The court may consider the testimony of lay witnesses and of expert witnesses, if available, regarding the impact of the continuance on the victim. [1989 c 332 § 7.]

Finding—1989 c 332: "The legislature finds that treatment of the emotional problems of child sexual abuse victims may be impaired by lengthy delay in trial of the accused and the resulting delay in testimony of the child victim. The trauma of the abusive incident is likely to be exacerbated by requiring testimony from a victim who has substantially completed therapy and is forced to relive the incident. The legislature finds that it is necessary to prevent, to the extent reasonably possible, lengthy and unnecessary delays in trial of a person charged with abuse of a minor." [1989 c 332 § 6.]

10.46.110 Discharging defendant to give evidence.

When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a codefendant. The order of discharge is a bar to another prosecution for the same offense. [Code 1881 § 1092; 1873 p 237 § 253; 1854 p 120 § 117; RRS § 2162.]

Conviction or acquittal—Several defendants: RCW 10.61.035.

10.46.190 Liability of convicted person for costs—

Jury fee. Every person convicted of a crime or held to bail to keep the peace shall be liable to all the costs of the proceedings against him, including, when tried by a jury in the superior court, a jury fee as provided for in civil actions, and when tried by a jury before a committing magistrate, twenty-five dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines. The jury fee, when collected for a case tried by the superior court, shall be paid to the clerk, to be by him applied as the jury fee in civil cases is applied. [1977 ex.s. c 248 § 1; 1977 ex.s. c 53 § 1; 1961 c 304 § 8; Code 1881 § 2105; 1869 p 418 § 3; RRS § 2227.]

Disposition of fines and costs: Chapter 10.82 RCW.

Jury

*fees: RCW 4.44.110, 36.18.020.
in district court: RCW 10.04.050.
trials by: Chapter 10.49 RCW.*

10.46.200 Costs allowed to acquitted or discharged defendant. No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment is found against him, or for want of prosecution, shall be liable for any costs or fees of any officer or for any charge of subsistence while he was in custody, but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases. [Code 1881 § 1168; 1877 p 207 § 10; 1854 p 129 § 177; RRS § 2236.]

10.46.210 Taxation of costs on acquittal or discharge—Generally—Frivolous complaints. When any person shall be brought before a court or other committing magistrate of any county, city or town in this state, having jurisdiction of the alleged offense, charged with the commis-

sion of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city or town for or in which the said complaint is triable, but if the court or other magistrate trying said charge, shall decide the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law. [1987 c 202 § 168; Code 1881 § 2103; 1869 p 418 § 1; RRS § 2225.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.46.220 Cost bills in felony cases—Certification.

In all convictions for felony, whether capital or punishable by imprisonment in the penitentiary, the clerk of the superior court shall forthwith, after sentence, tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the county in which the trial was had. After which the judge of the superior court shall allow and approve such bill or so much thereof, as is allowable by law. The clerk of the superior court shall thereupon, under his hand, and under the seal of the court, certify said triplicate cost bills, and shall file one with the papers of cause, and shall transmit one to the administrator for the courts and one to the county auditor of the county in which said felony was committed. [1979 c 129 § 1; 1883 p 35 § 1; Code 1881 § 2106; RRS § 2228.]

10.46.230 Cost bills in felony cases—Payment.

Upon the receipt of the cost bill, as provided for in the preceding section, the county auditor shall draw warrants for the amounts due each person, as certified in said cost bill, which warrants shall be paid as other county warrants are paid. On receipt of the certified copy of said cost bill, the administrator for the courts shall examine and audit said bill and allow the payment by the state of statutorily required witness fees in cases where conviction of a felony is obtained and the defendant is sentenced to pay a fine or is given a prison sentence even if the sentence is deferred or suspended. Payment shall be allowed by the administrator for the courts in such cases even when the conviction is subsequently reversed or if a new trial is granted. [1979 c 129 § 2; 1883 p 35 § 1; Code 1881 § 2107; 1873 p 250 § 316; RRS § 2229.]

Chapter 10.52

WITNESSES—GENERALLY

Sections

- 10.52.040 Compelling witness to attend and testify—Accused as witness.
- 10.52.060 Confrontation of witnesses.
- 10.52.090 Incriminating testimony not to be used.
- 10.52.100 Identity of child victims of sexual assault not to be disclosed.

Discharging defendant to give evidence: RCW 10.46.110.

Salaried public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.

Witnesses: Rules of court: ER 610, CrR 6.12, CrRLJ 6.12.

10.52.040 Compelling witness to attend and testify—Accused as witness. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the state, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may, upon the motion of the prosecuting attorney or defense counsel, recognize witnesses, with or without sureties, to attend and testify at any hearing or trial in any criminal prosecution in any court of this state, or before the grand jury. In default of such recognizance, or in the event that surety is required and has not been obtained, the court shall require the appearance of the witness before the court and shall appoint counsel for the witness if he is indigent and then shall determine that the testimony of the witness would be material to either the prosecution or the defendant and that the witness would not attend the trial of the matter unless detained and, therefore, the court may direct that such witness shall be detained in the custody of the sheriff until the hearing or trial in which the witness is to testify: PROVIDED, That each witness detained for failure to obtain surety shall be paid, in addition to witness fees for actual appearance in court, for each day of his detention a sum equal to the daily jury fee paid to a juror serving in a superior court; and each witness in breach of recognizance and who is detained therefor shall be paid, in addition to witness fees for actual appearance in court, the sum of one dollar for each day of his detention. Any such witness shall be provided food and lodging while so detained. Any person accused of any crime in this state, by indictment, information, or otherwise, may, in the examination or trial of the cause, offer himself, or herself, as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when accused shall so testify, he or she shall be subject to all the rules of law relating to cross-examination of other witnesses: PROVIDED, That nothing in this code shall be construed to compel such accused person to offer himself or herself as a witness in such case. [1984 c 76 § 17; 1969 ex.s. c 143 § 1; 1915 c 83 § 1; 1891 c 28 § 69; Code 1881 § 1067; 1873 p 233 § 229; 1871 p 105 § 2; 1854 p 116 § 93; RRS § 2148. Formerly RCW 10.52.040, 10.52.050, 10.52.070, and 10.52.080.]

Rules of court: See CrR 6.13, 6.14.

Rights of accused persons: State Constitution Art. 1 §§ 9, 22 (Amendment 10).

10.52.060 Confrontation of witnesses. Every person accused of crime shall have the right to meet the witnesses produced against him face to face: PROVIDED, That whenever any witness whose deposition shall have been taken pursuant to law by a magistrate, in the presence of the defendant and his counsel, shall be absent, and cannot be found when required to testify upon any trial or hearing, so much of such deposition as the court shall deem admissible and competent shall be admitted and read as evidence in such case. [1909 c 249 § 54; RRS § 2306. Prior: Code 1881 § 765; 1873 p 180 § 2; 1869 p 198 § 2; 1859 p 104 § 2.]

Reviser's note: Caption for 1909 c 249 § 54 reads as follows: "SEC. 54. WITNESSES."

Rights of accused persons: State Constitution Art. 1 § 22 (Amendment 10).

10.52.090 Incriminating testimony not to be used. In every case where it is provided in *this act that a witness shall not be excused from giving testimony tending to criminate himself, no person shall be excused from testifying or producing any papers or documents on the ground that his testimony may tend to criminate or subject him to a penalty or forfeiture; but he shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning which he shall so testify, except for perjury or offering false evidence committed in such testimony. [1909 c 249 § 39; RRS § 2291.]

Rules of court: Ordering immunity from prosecution—Incriminating testimony not to be used—CrR 6.14.

**Reviser's note: For meaning of "this act," see note following RCW 9.01.120.*

Bribery or corrupt solicitation: State Constitution Art. 2 § 30.

Rights of accused persons: State Constitution Art. 1 §§ 9, 22 (Amendment 10).

*Witness not excused from giving testimony tending to incriminate himself in crimes concerning anarchy: RCW 9.05.050.
bribery: RCW 9.18.080.*

10.52.100 Identity of child victims of sexual assault not to be disclosed. Child victims of sexual assault who are under the age of eighteen, have a right not to have disclosed to the public or press at any court proceeding involved in the prosecution of the sexual assault, the child victim's name, address, location, photographs, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. The court shall ensure that information identifying the child victim is not disclosed to the press or the public and that in the event of any improper disclosure the court shall make all necessary orders to restrict further dissemination of identifying information improperly obtained. Court proceedings include but are not limited to pretrial hearings, trial, sentencing, and appellate proceedings. The court shall also order that any portion of any court records, transcripts, or recordings of court proceedings that contain information identifying the child victim shall be sealed and not open to public inspection unless those identifying portions are deleted from the documents or tapes. [1992 c 188 § 9.]

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

Chapter 10.55

WITNESSES OUTSIDE THE STATE (UNIFORM ACT)

Sections

10.55.010	Definitions.
10.55.020	Summoning witness in this state to testify in another state.
10.55.060	Witness from another state summoned to testify in this state.
10.55.100	Exemption of witness from arrest and service of process.
10.55.110	Uniformity of interpretation.
10.55.120	Short title.
10.55.130	Severability—1943 c 218.

10.55.010 Definitions. "Witness" as used in this chapter shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States and the District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness. [1943 c 218 § 1; Rem. Supp. 1943 § 2150-1.]

10.55.020 Summoning witness in this state to testify in another state. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certified under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence and of any other state through which the witness may be required to travel by ordinary course of travel, at a time and place specified in the certificate. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court

of record in this state. [1943 c 218 § 2; Rem. Supp. 1943 § 2150-2. Formerly RCW 10.55.020, 10.55.030, 10.55.040, and 10.55.050.]

10.55.060 Witness from another state summoned to testify in this state. If any person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness either for the prosecution or for the defense, in a criminal action pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. [1943 c 218 § 3; Rem. Supp. 1943 § 2150-3. Formerly RCW 10.55.060, 10.55.070, 10.55.080, and 10.55.090.]

10.55.100 Exemption of witness from arrest and service of process. If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. [1943 c 218 § 4; Rem. Supp. 1943 § 2150-4.]

10.55.110 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. [1943 c 218 § 5; Rem. Supp. 1943 § 2150-5.]

10.55.120 Short title. This chapter may be cited as "Uniform Act to Secure the Attendance of Witnesses from

Without a State in Criminal Proceedings." [1943 c 218 § 6; Rem. Supp. 1943 § 2150-6.]

10.55.130 Severability—1943 c 218. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1943 c 218 § 7; Rem. Supp. 1943 § 2150-7.]

Chapter 10.58 EVIDENCE

Sections

- 10.58.010 Rules—Generally.
- 10.58.020 Presumption of innocence—Conviction of lowest degree, when.
- 10.58.030 Confession as evidence.
- 10.58.040 Intent to defraud.
- 10.58.060 Ownership—Proof of.
- 10.58.080 View of place of crime permissible.

Evidence

generally: *Title 5 RCW.*

material to homicide, search and seizure: *RCW 10.79.015.*

10.58.010 Rules—Generally. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions. [Code 1881 § 1071; 1873 p 234 § 233; 1854 p 117 § 97; RRS § 2152.]

10.58.020 Presumption of innocence—Conviction of lowest degree, when. Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. [1909 c 249 § 56; 1891 c 28 § 91; Code 1881 § 767; 1854 p 76 § 3; RRS § 2308. Formerly RCW 10.58.020 and 10.61.020.]

Conviction of attempts or lesser or included crimes: RCW 10.61.003, 10.61.006, 10.61.010.

10.58.030 Confession as evidence. The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony. [Code 1881 § 1070; 1873 p 234 § 232; 1854 p 117 § 96; RRS § 2151.]

10.58.040 Intent to defraud. Whenever an intent to defraud shall be made an element of an offense, it shall be sufficient if an intent appears to defraud any person, association or body politic or corporate whatsoever. [1909 c 249 § 40; RRS § 2292.]

10.58.060 Ownership—Proof of. In the prosecution of any offense committed upon, or in relation to, or in any

way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof. [Code 1881 § 963; 1854 p 99 § 133; RRS § 2156.]

Indictment or information, certain defects or imperfections deemed immaterial: RCW 10.37.056.

10.58.080 View of place of crime permissible. The court may order a view by any jury impaneled to try a criminal case. [Code 1881 § 1090; 1873 p 237 § 251; 1854 p 120 § 115; RRS § 2160.]

Chapter 10.61 VERDICTS

Sections

- 10.61.003 Degree offenses—Inferior degree—Attempt.
- 10.61.006 Other cases—Included offenses.
- 10.61.010 Conviction of lesser crime.
- 10.61.035 Conviction or acquittal—Several defendants.
- 10.61.060 Reconsideration of verdict.

Rules of court: Verdicts—CrR 6.16.

Former acquittal or conviction—Offense embraces other degrees and included offenses: RCW 10.43.020, 10.43.050.

10.61.003 Degree offenses—Inferior degree—Attempt. Upon an indictment or information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense. [1891 c 28 § 75; Code 1881 § 1097; 1854 p 120 § 122; RRS § 2167. Formerly RCW 10.61.010, part.] [SLC-RO-11]

Where doubt as to degree, conviction of lowest: RCW 10.58.020.

10.61.006 Other cases—Included offenses. In all other cases the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he is charged in the indictment or information. [1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123; RRS § 2168. Formerly RCW 10.61.010, part.] [SLC-RO-11]

10.61.010 Conviction of lesser crime. Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty. [1909 c 249 § 11; RRS § 2263. FORMER PARTS OF SECTION: (i) 1891 c 28 § 75; Code 1881 § 1097; 1854 p 120 § 122; RRS § 2167, now codified as RCW 10.61.003. (ii) 1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123;

RRS § 2168, now codified as RCW 10.61.006.] [SLC-RO-11]

10.61.035 Conviction or acquittal—Several defendants. Upon an indictment or information against several defendants any one or more may be convicted or acquitted. [1891 c 28 § 37; Code 1881 § 1022; 1873 p 228 § 205; 1869 p 243 § 200; RRS § 2073. Formerly RCW 10.61.030, part.]

Rules of court: This section superseded in part by CrR 6.16. See comment after CrR 6.16.

Discharging defendant to give evidence: RCW 10.46.110.

10.61.060 Reconsideration of verdict. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider the verdict; and if after such reconsideration they return the same verdict it must be entered, but it shall be good cause for new trial. When there is a verdict of acquittal the court cannot require the jury to reconsider it. [1891 c 28 § 78; Code 1881 § 1100; 1873 p 239 § 261; 1854 p 121 § 125; RRS § 2170.]

Chapter 10.64

JUDGMENTS AND SENTENCES

Sections

10.64.015	Judgment to include costs—Exception.
10.64.021	Notice of conviction.
10.64.025	Detention of defendant.
10.64.027	Conditions of release.
10.64.060	Form of sentence to penitentiary.
10.64.070	Recognizance to maintain good behavior or keep the peace.
10.64.075	Breach of recognizance conditions.
10.64.080	Judgments a lien on realty.
10.64.100	Final record—What to contain.
10.64.110	Fingerprint of defendant in felony convictions.
10.64.120	Referral assessments—Probation department oversight committee.

Rules of court: Judgments and sentencing—CrR 7.1 through 7.4.

Assessments required of other convicted persons
offender supervision: RCW 9.94A.270.
parolees: RCW 72.04A.120.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

10.64.015 Judgment to include costs—Exception. When the defendant is found guilty, the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise. [Code 1881 § 1104; 1873 p 241 § 272; 1854 p 121 § 129; RRS § 2187. Formerly RCW 10.64.010, part.]

Requiring defendant to pay costs—Procedure: RCW 10.01.160, 10.01.170, chapter 10.82 RCW.

10.64.021 Notice of conviction. Within fourteen days of the entry of a judgment of conviction of an individual for a felony, the clerk of the court shall send a notice of the conviction including the full name of the defendant and his or her residential address to the county auditor or custodian of voting records in the county of the defendant's residence. [1994 c 57 § 1.]

[Title 10 RCW—page 34]

Severability—1994 c 57: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 57 § 55.]

Effective date—1994 c 57: "Sections 1 through 3, 7, 10 through 12, 21, 22, 25, 27, 28, 31 through 34, 37 through 40, 42, 44 through 52, and 54 of this act take effect January 1, 1995." [1994 c 57 § 56.]

10.64.025 Detention of defendant. (1) A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released. Any bail bond that was posted on behalf of a defendant shall, upon the defendant's conviction, be exonerated.

(2) A defendant who has been found guilty of one of the following offenses shall be detained pending sentencing: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses. [1996 c 275 § 10; 1989 c 276 § 2.]

Finding—1996 c 275: See note following RCW 9.94A.120.

Severability—1989 c 276: See note following RCW 9.95.062.

10.64.027 Conditions of release. In order to minimize the trauma to the victim, the court may attach conditions on release of a defendant under RCW 10.64.025 regarding the whereabouts of the defendant, contact with the victim, or other conditions. [1989 c 276 § 5.]

Severability—1989 c 276: See note following RCW 9.95.062.

10.64.060 Form of sentence to penitentiary. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at any one time; and in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order. [Code 1881 § 1127; 1873 p 243 § 285; 1854 p 124 § 149; RRS § 2208.]

Indeterminate sentences: Chapter 9.95 RCW.

Sentencing, 1981 act: Chapter 9.94A RCW.

10.64.070 Recognizance to maintain good behavior or keep the peace. Every court before whom any person shall be convicted upon an indictment or information for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and

to stand committed until he shall so recognize. [1891 c 28 § 83; Code 1881 § 1121; 1873 p 242 § 279; 1854 p 123 § 143; RRS § 2202. FORMER PART OF SECTION: Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203, now codified as RCW 10.64.075.]

10.64.075 Breach of recognizance conditions. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace. [Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203. Formerly RCW 10.64.070, part.]

10.64.080 Judgments a lien on realty. Judgments for fines in all criminal actions rendered, are, and may be made liens upon the real estate of the defendant in the same manner, and with like effect as judgments in civil actions. [Code 1881 § 1111; RRS § 2188.]

10.64.100 Final record—What to contain. The clerk of the court shall make a final record of all the proceedings in a criminal prosecution within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment or information, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders, or decision, and bill of exceptions. [1891 c 28 § 85; Code 1881 § 1134; 1873 p 245 § 292; 1854 p 125 § 156; RRS § 2224.]

10.64.110 Fingerprint of defendant in felony convictions. Following June 15, 1977, there shall be affixed to the original of every judgment and sentence of a felony conviction in every court in this state and every order adjudicating a juvenile to be a delinquent based upon conduct which would be a felony if committed by an adult, a fingerprint of the defendant or juvenile who is the subject of the order. When requested by the clerk of the court, the actual affixing of fingerprints shall be done by a representative of the office of the county sheriff.

The clerk of the court shall attest that the fingerprints appearing on the judgment in sentence, order of adjudication of delinquency, or docket, is that of the individual who is the subject of the judgment or conviction, order, or docket entry. [1977 ex.s. c 259 § 1.]

10.64.120 Referral assessments—Probation department oversight committee. (1) Every judge of a court of limited jurisdiction shall have the authority to levy upon a person a monthly assessment not to exceed one hundred dollars for services provided whenever the person is referred by the court to the misdemeanor probation department for evaluation or supervision services. The assessment may also be made by a judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court.

(2) For the purposes of this section the office of the administrator for the courts shall define a probation department and adopt rules for the qualifications of probation officers based on occupational and educational requirements developed by an oversight committee. This oversight

committee shall include a representative from the district and municipal court judges association, the misdemeanor corrections association, the office of the administrator for the courts, and associations of cities and counties. The oversight committee shall consider qualifications that provide the training and education necessary to (a) conduct presentencing and postsentencing background investigations, including sentencing recommendations to the court regarding jail terms, alternatives to incarceration, and conditions of release; and (b) provide ongoing supervision and assessment of offenders' needs and the risk they pose to the community.

(3) It shall be the responsibility of the probation services office to implement local procedures approved by the court of limited jurisdiction to ensure collection and payment of such fees into the general fund of the city or county treasury.

(4) Revenues raised under this section shall be used to fund programs for probation services and shall be in addition to those funds provided in RCW 3.62.050. [1996 c 298 § 6; 1991 c 247 § 3; 1982 c 207 § 4.]

Chapter 10.66

DRUG TRAFFICKERS—OFF-LIMITS ORDERS

Sections

10.66.005	Findings.
10.66.010	Definitions.
10.66.020	When order may be issued.
10.66.030	Hearing—Summons.
10.66.040	Ex parte temporary order—Hearing—Notice.
10.66.050	Additional relief—PADT area.
10.66.060	Bond or security.
10.66.070	Appearance of party.
10.66.080	Notice of order to law enforcement agency.
10.66.090	Penalties.
10.66.100	Additional penalties.
10.66.110	Jurisdiction.
10.66.120	Venue.
10.66.130	Modification of order—Notice to law enforcement agency.
10.66.900	Severability—1989 c 271.

10.66.005 Findings. The legislature finds that drug abuse is escalating at an alarming rate. New protections need to be established to address this drug crisis which is threatening every stratum of our society. Prohibiting known drug traffickers from frequenting areas for continuous drug activity is one means of addressing this pervasive problem. [1989 c 271 § 213.]

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

(1) "Applicant" means any person who owns, occupies, or has a substantial interest in property, or who is a neighbor to property which is adversely affected by drug trafficking, including:

(a) A "family or household member" as defined by RCW 10.99.020(1), who has a possessory interest in a residence as an owner or tenant, at least as great as a known drug trafficker's interest;

(b) An owner or lessor;

(c) An owner, tenant, or resident who lives or works in a designated PADT area; or

(d) A city or prosecuting attorney for any jurisdiction in this state where drug trafficking is occurring.

(2) "Drug" or "drugs" means a controlled substance as defined in chapter 69.50 RCW or an "imitation controlled substance" as defined in RCW 69.52.020.

(3) "Known drug trafficker" means any person who has been convicted of a drug offense in this state, another state, or federal court who subsequently has been arrested for a drug offense in this state. For purposes of this definition, "drug offense" means a felony violation of chapter 69.50 or 69.52 RCW or equivalent law in another jurisdiction that involves the manufacture, distribution, or possession with intent to manufacture or distribute, of a controlled substance or imitation controlled substance.

(4) "Off-limits orders" means an order issued by a superior or district court in the state of Washington that enjoins known drug traffickers from entering or remaining in a designated PADT area.

(5) "Protected against drug trafficking area" or "PADT area" means any specifically described area, public or private, contained in an off-limits order. The perimeters of a PADT area shall be defined using street names and numbers and shall include all real property contained therein, where drug sales, possession of drugs, pedestrian or vehicular traffic attendant to drug activity, or other activity associated with drug offenses confirms a pattern associated with drug trafficking. The area may include the full width of streets, alleys and sidewalks on the perimeter, common areas, planting strips, parks and parking areas within the area described using the streets as boundaries. [1989 c 271 § 214.]

10.66.020 When order may be issued. A court may enter an off-limits order enjoining a known drug trafficker who has been associated with drug trafficking in an area that the court finds to be a PADT area, from entering or remaining in a designated PADT area for up to one year. This relief may be ordered pursuant to applications for injunctive relief or as part of a criminal proceeding as follows:

(1) In a civil action, including an action brought under this chapter;

(2) In a nuisance abatement action pursuant to chapter 7.43 RCW;

(3) In an eviction action to exclude known drug traffickers or tenants who were evicted for allowing drug trafficking to occur on the premises which were the subject of the eviction action;

(4) As a condition of pretrial release of a known drug trafficker awaiting trial on drug charges. The order shall be in effect until the time of sentencing or dismissal of the criminal charges; or

(5) As a condition of sentencing of any known drug trafficker convicted of a drug offense. The order may include all periods of community placement or community supervision. [1989 c 271 § 215.]

10.66.030 Hearing—Summons. Upon the filing of an application for an off-limits order under RCW 10.66.020 (1), (2), or (3), the court shall set a hearing fourteen days from the filing of the application, or as soon thereafter as the hearing can be scheduled. If the respondent has not already

been served with a summons, the application shall be served on the respondent not less than five court days before the hearing. If timely service cannot be made, the court may set a new hearing date. [1989 c 271 § 216.]

10.66.040 Ex parte temporary order—Hearing—Notice. Upon filing an application for an off-limits order under this chapter, an applicant may obtain an ex parte temporary off-limits order, with or without notice, only upon a showing that serious or irreparable harm will result to the applicant if the temporary off-limits order is not granted. An ex parte temporary off-limits order shall be effective for a fixed period not to exceed fourteen days, but the court may reissue the order upon a showing of good cause. A hearing on a one-year off-limits order, as provided in this chapter, shall be set for fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the temporary off-limits order along with a copy of the application and notice of the date set for the full hearing. At the hearing, if the court finds that respondent is a known drug trafficker who has engaged in drug trafficking in a particular area, and that the area is associated with a pattern of drug activities, the court shall issue a one-year off-limits order prohibiting the respondent from having any contact with the PADT area. At any time within three months before the expiration of the order, the applicant may apply for a renewal of the order by filing a new petition under this chapter. [1989 c 271 § 217.]

10.66.050 Additional relief—PADT area. In granting a temporary off-limits order or a one-year off-limits order, the court shall have discretion to grant additional relief as the court considers proper to achieve the purposes of this chapter. The PADT area defined in any off-limits order must be reasonably related to the area or areas impacted by the unlawful drug activity as described by the applicant in any civil action under RCW 10.66.020 (1), (2), or (3). The court in its discretion may allow a respondent, who is the subject of any order issued under *section 214 of this act as part of a civil or criminal proceeding, to enter an off-limits area or areas for health or employment reasons, subject to conditions prescribed by the court. Upon request, a certified copy of the order shall be provided to the applicant by the clerk of the court. [1989 c 271 § 218.]

*Reviser's note: The reference to "section 214 of this act" appears to be erroneous, as section 214 is a definition section. Section 215, codified as RCW 10.66.020, relates to the issuance of off-limits orders.

10.66.060 Bond or security. A temporary off-limits order or a one-year off-limits order may not issue under this chapter except upon the giving of a bond or security by the applicant. The court shall set the bond or security in the amount the court deems proper, but not less than one thousand dollars, for the payment of costs and damages that may be incurred by any party who is found to have been wrongfully restrained or enjoined. A bond or security shall not be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington. [1989 c 271 § 219.]

10.66.070 Appearance of party. Nothing in this chapter shall preclude a party from appearing in person or by counsel. [1989 c 271 § 220.]

10.66.080 Notice of order to law enforcement agency. A copy of an off-limits order granted under this chapter shall be forwarded by the court to the local law enforcement agency with jurisdiction over the PADT area specified in the order on or before the next judicial day following issuance of the order. Upon receipt of the order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system. [1989 c 271 § 221.]

10.66.090 Penalties. (1) Any person who willfully disobeys an off-limits order issued under this chapter shall be guilty of a gross misdemeanor.

(2) Any person who willfully disobeys an off-limits order in violation of the terms of the order and who also either:

(a) Enters or remains in a PADT area that is within one thousand feet of any school; or

(b) Is convicted of a second or subsequent violation of this chapter, is guilty of a class C felony. [1989 c 271 § 223.]

10.66.100 Additional penalties. Any person who willfully disobeys an off-limits order issued under this chapter shall be subject to criminal penalties as provided in this chapter and may also be found in contempt of court and subject to penalties under *chapter 7.20 RCW. [1989 c 271 § 222.]

**Reviser's note:* Chapter 7.20 RCW was repealed by 1989 c 373 § 28. For later enactment, see chapter 7.21 RCW.

10.66.110 Jurisdiction. The superior courts shall have jurisdiction of all civil actions and all felony criminal proceedings brought under this chapter. Courts of limited jurisdiction shall have jurisdiction of all misdemeanor and gross misdemeanor criminal actions brought under this chapter. [1989 c 271 § 224.]

10.66.120 Venue. For the purposes of this chapter, an action may be brought in any county in which any element of the alleged drug trafficking activities occurred. [1989 c 271 § 225.]

10.66.130 Modification of order—Notice to law enforcement agency. Upon application, notice to all parties, and a hearing, the court may modify the terms of an off-limits order. When an order is terminated, modified, or amended before its expiration date, the clerk of the court shall forward, on or before the next judicial day, a true copy of the amended order to the law enforcement agency specified in the order. Upon receipt of an order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system. [1989 c 271 § 226.]

10.66.900 Severability—1989 c 271. See note following RCW 9.94A.310.

Chapter 10.70

COMMITMENTS

(Formerly: Commitments and executions)

Sections

10.70.010	Commitment until fine and costs are paid.
10.70.020	Mittimus upon sentence to imprisonment.
10.70.140	Aliens committed—Notice to immigration authority.
10.70.150	Aliens committed—Copies of clerk's records.

Execution of death sentence Chapter 10.95 RCW.

10.70.010 Commitment until fine and costs are paid. When the defendant is adjudged to pay a fine and costs, the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law. [Code 1881 § 1119; 1873 p 242 § 277; 1854 p 123 § 141; RRS § 2200.]

Commitment for failure to pay fine and costs—Execution against defendant's property: RCW 10.82.030.

Stay of execution for sixty days on recognizance: RCW 10.82.020, 10.82.025.

10.70.020 Mittimus upon sentence to imprisonment. When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, who shall execute it accordingly. [Code 1881 § 1126; 1873 p 243 § 284; 1854 p 124 § 148; RRS § 2207.]

10.70.140 Aliens committed—Notice to immigration authority. Whenever any person shall be committed to a state correctional facility, the county jail, or any other state or county institution which is supported wholly or in part by public funds, it shall be the duty of the warden, superintendent, sheriff or other officer in charge of such state or county institution to at once inquire into the nationality of such person, and if it shall appear that such person is an alien, to immediately notify the United States immigration officer in charge of the district in which such penitentiary, reformatory, jail or other institution is located, of the date of and the reasons for such alien commitment, the length of time for which committed, the country of which the person is a citizen, and the date on which and the port at which the person last entered the United States. [1992 c 7 § 29; 1925 ex.s. c 169 § 1; RRS § 2206-1.]

10.70.150 Aliens committed—Copies of clerk's records. Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing any alien to any state or county institution which is supported wholly or in part by public funds, it shall be the duty of the clerk of such court to furnish without charge a certified copy of the complaint, information or indictment and the judgment and sentence and any other record pertaining to the case of the convicted alien. [1925 ex.s. c 169 § 2; RRS § 2206-2.]

Chapter 10.73
CRIMINAL APPEALS

Sections

10.73.010	Appeal by defendant.
10.73.040	Bail pending appeal.
10.73.090	Collateral attack—One year time limit.
10.73.100	Collateral attack—When one year limit not applicable.
10.73.110	Collateral attack—One year time limit—Duty of court to advise defendant.
10.73.120	Collateral attack—One year time limit—Duty of department of corrections to advise.
10.73.130	Collateral attack—One year time limit—Applicability.
10.73.140	Collateral attack—Subsequent petitions.
10.73.150	Right to counsel.
10.73.160	Court fees and costs.
10.73.900	Severability—1989 c 395.

Effect of appellate review by defendant: RCW 9.95.060, 9.95.062.

10.73.010 Appeal by defendant. Appeal by defendant, see Rules of Court.

10.73.040 Bail pending appeal. In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the state of Washington in the sum so fixed be executed on his behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds by *section ten of this act, such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section; but the court may by order require a new bond in a larger amount or with new sureties, and may commit the appellant until the order be complied with. [1893 c 61 § 31; RRS § 1747.]

*Reviser's note: The term "section ten of this act," refers to 1893 c 61 § 10, which was repealed by 1957 c 7 § 10.

10.73.090 Collateral attack—One year time limit.

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final. [1989 c 395 § 1.]

10.73.100 Collateral attack—When one year limit not applicable. The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction; or

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard. [1989 c 395 § 2.]

10.73.110 Collateral attack—One year time limit—Duty of court to advise defendant. At the time judgment and sentence is pronounced in a criminal case, the court shall advise the defendant of the time limit specified in RCW 10.73.090 and 10.73.100. [1989 c 395 § 4.]

10.73.120 Collateral attack—One year time limit—Duty of department of corrections to advise. As soon as practicable after July 23, 1989, the department of corrections shall attempt to advise the following persons of the time limit specified in RCW 10.73.090 and 10.73.100: Every person who, on July 23, 1989, is serving a term of incarceration, probation, parole, or community supervision pursuant to conviction of a felony. [1989 c 395 § 5.]

10.73.130 Collateral attack—One year time limit—Applicability. RCW 10.73.090 and 10.73.100 apply only to petitions and motions filed more than one year after July 23, 1989. [1989 c 395 § 6.]

10.73.140 Collateral attack—Subsequent petitions. If a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause

why the petitioner did not raise the new grounds in the previous petition. Upon receipt of a personal restraint petition, the court of appeals shall review the petition and determine whether the person has previously filed a petition or petitions and if so, compare them. If upon review, the court of appeals finds that the petitioner has previously raised the same grounds for review, or that the petitioner has failed to show good cause why the ground was not raised earlier, the court of appeals shall dismiss the petition on its own motion without requiring the state to respond to the petition. Upon receipt of a first or subsequent petition, the court of appeals shall, whenever possible, review the petition and determine if the petition is based on frivolous grounds. If frivolous, the court of appeals shall dismiss the petition on its own motion without first requiring the state to respond to the petition. [1989 c 395 § 9.]

10.73.150 Right to counsel. Counsel shall be provided at state expense to an adult offender convicted of a crime and to a juvenile offender convicted of an offense when the offender is indigent or indigent and able to contribute as those terms are defined in RCW 10.101.010 and the offender:

- (1) Files an appeal as a matter of right;
- (2) Responds to an appeal filed as a matter of right or responds to a motion for discretionary review or petition for review filed by the state;
- (3) Is under a sentence of death and requests counsel be appointed to file and prosecute a motion or petition for collateral attack as defined in RCW 10.73.090. Counsel may be provided at public expense to file or prosecute a second or subsequent collateral attack on the same judgment and sentence, if the court determines that the collateral attack is not barred by RCW 10.73.090 or 10.73.140;
- (4) Is not under a sentence of death and requests counsel to prosecute a collateral attack after the chief judge has determined that the issues raised by the petition are not frivolous, in accordance with the procedure contained in rules of appellate procedure 16.11. Counsel shall not be provided at public expense to file or prosecute a second or subsequent collateral attack on the same judgment and sentence;
- (5) Responds to a collateral attack filed by the state or responds to or prosecutes an appeal from a collateral attack that was filed by the state;
- (6) Prosecutes a motion or petition for review after the supreme court or court of appeals has accepted discretionary review of a decision of a court of limited jurisdiction; or
- (7) Prosecutes a motion or petition for review after the supreme court has accepted discretionary review of a court of appeals decision. [1995 c 275 § 2.]

Finding—1995 c 275: "The legislature is aware that the constitutional requirements of equal protection and due process require that counsel be provided for indigent persons and persons who are indigent and able to contribute for the first appeal as a matter of right from a judgment and sentence in a criminal case or a juvenile offender proceeding, and no further. There is no constitutional right to appointment of counsel at public expense to collaterally attack a judgment and sentence in a criminal case or juvenile offender proceeding or to seek discretionary review of a lower appellate court decision.

The legislature finds that it is appropriate to extend the right to counsel at state expense beyond constitutional requirements in certain limited circumstances to persons who are indigent and persons who are

indigent and able to contribute as those terms are defined in RCW 10.101.010." [1995 c 275 § 1.]

Severability—1995 c 275: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 275 § 5.]

10.73.160 Court fees and costs. (1) The court of appeals, supreme court, and superior courts may require an adult or a juvenile convicted of an offense or the parents or another person legally obligated to support a juvenile offender to pay appellate costs.

(2) Appellate costs are limited to expenses specifically incurred by the state in prosecuting or defending an appeal or collateral attack from a criminal conviction or sentence or a juvenile offender conviction or disposition. Appellate costs shall not include expenditures to maintain and operate government agencies that must be made irrespective of specific violations of the law. Expenses incurred for producing a verbatim report of proceedings and clerk's papers may be included in costs the court may require a convicted defendant or juvenile offender to pay.

(3) Costs, including recoupment of fees for court-appointed counsel, shall be requested in accordance with the procedures contained in Title 14 of the rules of appellate procedure and in Title 9 of the rules for appeal of decisions of courts of limited jurisdiction. An award of costs shall become part of the trial court judgment and sentence. An award of costs in juvenile cases shall also become part of any order previously entered in the trial court pursuant to RCW 13.40.145.

(4) A defendant or juvenile offender who has been sentenced to pay costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the defendant or juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the defendant, the defendant's immediate family, or the juvenile offender, the sentencing court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(5) The parents or another person legally obligated to support a juvenile offender who has been ordered to pay appellate costs pursuant to RCW 13.40.145 and who is not in contumacious default in the payment may at any time petition the court that sentenced the juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the parents or another person legally obligated to support a juvenile offender or on their immediate families, the sentencing court may remit all or part of the amount due in costs, or may modify the method of payment. [1995 c 275 § 3.]

Finding—Severability—1995 c 275: See notes following RCW 10.73.150.

10.73.900 Severability—1989 c 395. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 395 § 7.]

Chapter 10.77

CRIMINALLY INSANE—PROCEDURES

Sections

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10.77.025	Maximum term of commitment or treatment.
10.77.030	Establishing insanity as a defense.
10.77.040	Instructions to jury on special verdict.
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10.77.097	Relevant records and reports shall accompany defendant upon transfer.
10.77.100	Experts or professional persons as witnesses.
10.77.110	Acquittal of felony—Discharge, hospitalization, conditional release—Acquittal of nonfelony—Release or custody for evaluation—Evaluation, treatment.
10.77.120	Confinement of committed person—Custody—Hearings—Discharge.
10.77.140	Periodic examinations—Developmentally disabled—Reports—Notice to court.
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Rules of court: Cf. CrR 4.2(c).

Mentally ill, commitment: Chapter 71.05 RCW.

Protocols required: RCW 71.05.214.

10.77.010 Definitions. As used in this chapter:

(1) "County designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(2) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(3) "Department" means the state department of social and health services.

(4) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(5) "Developmental disability" means the condition defined in *RCW 71A.10.020(2).

(6) "Expert or professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW; or

(c) A social worker with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(7) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(8) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct.

(9) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(10) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(11) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(12) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(13) "Secretary" means the secretary of the department of social and health services or his or her designee.

(14) "Treatment" means any currently standardized medical or mental health procedure including medication.

(15) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. [1998 c 297 § 29; 1993 c 31 § 4; 1989 c 420 § 3; 1983 c 122 § 1; 1974 ex.s. c 198 § 1; 1973 1st ex.s. c 117 § 1.]

***Reviser's note:** RCW 71A.10.020 was amended by 1998 c 216 § 2, changing subsection (2) to subsection (3).

Alphabetization of section—1998 c 297 § 29: "The code reviser shall alphabetize the definitions in RCW 10.77.010 and correct any references." [1998 c 297 § 51.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.020 Rights of person under this chapter. (1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him or her. A person may waive his or her right to counsel; but such waiver shall only be effective if a court makes a specific finding that he or she is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

(a) The nature of the charges;

(b) The statutory offense included within them;

(c) The range of allowable punishments thereunder;

(d) Possible defenses to the charges and circumstances in mitigation thereof; and

(e) All other facts essential to a broad understanding of the whole matter.

(2) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he or she may retain an expert or professional person to perform an examination in his or her behalf. In the case of a person who is indigent, the court shall upon his or her request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his or her behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his or her services out of funds of the department, in an amount determined by the secretary to be fair and reasonable.

(3) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, the defendant shall be entitled to have his or her attorney present. The defendant may refuse to answer any question if he or she believes his or her answers may tend to incriminate him or her or form links leading to evidence of an incriminating nature. [1998 c 297 § 30; 1993 c 31 § 5; 1974 ex.s. c 198 § 2; 1973 1st ex.s. c 117 § 2.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.025 Maximum term of commitment or treatment. (1) Whenever any person has been: (a) Committed to a correctional facility or inpatient treatment under any provision of this chapter; or (b) ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was committed, or was acquitted by reason of insanity.

(2) Whenever any person committed under any provision of this chapter has not been finally discharged within seven days of the maximum possible penal sentence under subsection (1) of this section, and the professional person in charge of the facility believes it more likely than not that the person will not be finally discharged, the professional person shall, prior to the person's release from the facility, notify the appropriate county designated mental health professional of the impending release and provide a copy of all relevant information regarding the person, including the likely release date and shall indicate why final discharge was not made.

(3) A county designated mental health professional who receives notice and records under subsection (2) of this section shall, prior to the date of probable release, determine whether to initiate proceedings under chapter 71.05 RCW. [1998 c 297 § 31.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.030 Establishing insanity as a defense. (1) Evidence of insanity is not admissible unless the defendant, at the time of arraignment or within ten days thereafter or at such later time as the court may for good cause permit, files a written notice of his or her intent to rely on such a defense.

(2) Insanity is a defense which the defendant must establish by a preponderance of the evidence.

(3) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute insanity. [1998 c 297 § 32; 1974 ex.s. c 198 § 3; 1973 1st ex.s. c 117 § 3.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.040 Instructions to jury on special verdict.

Whenever the issue of insanity is submitted to the jury, the court shall instruct the jury to return a special verdict in substantially the following form:

answer
yes or no

- 1. Did the defendant commit the act charged? . . .
- 2. If your answer to number 1 is yes, do you acquit him or her because of insanity existing at the time of the act charged?
- 3. If your answer to number 2 is yes, is the defendant a substantial danger to other persons unless kept under further control by the court or other persons or institutions?
- 4. If your answer to number 2 is yes, does the defendant present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions?
- 5. If your answers to either number 3 or number 4 is yes, is it in the best interests of the defendant and others that the defendant be placed in treatment that is less restrictive than detention in a state mental hospital?

[1998 c 297 § 33; 1974 ex.s. c 198 § 4; 1973 1st ex.s. c 117 § 4.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.050 Mental incapacity as bar to proceedings.

No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues. [1974 ex.s. c 198 § 5; 1973 1st ex.s. c 117 § 5.]

10.77.060 Plea of not guilty due to insanity—Doubt as to competency—Examination—Bail—Report.

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant. At least one of the experts or professional persons appointed shall be a developmental disabilities professional if the court is advised by any party that the defendant may be developmentally disabled. For purposes of the examination, the court may order the defendant com-

mitted to a hospital or other suitably secure public or private mental health facility for a period of time necessary to complete the examination, but not to exceed fifteen days from the time of admission to the facility.

(b) When a defendant is ordered to be committed for inpatient examination under this subsection (1), the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court shall consider: (i) Recommendations of the expert or professional persons regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the examination authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the mental condition of the defendant;
- (c) If the defendant suffers from a mental disease or defect, or is developmentally disabled, an opinion as to competency;
- (d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, an opinion as to the defendant's sanity at the time of the act;
- (e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;
- (f) An opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(4) The secretary may execute such agreements as appropriate and necessary to implement this section. [1998 c 297 § 34; 1989 c 420 § 4; 1974 ex.s. c 198 § 6; 1973 1st ex.s. c 117 § 6.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.065 Mental condition evaluations—Reports and recommendations required. (*Effective March 1, 1999.*)

(1) Whenever a defendant is evaluated under this chapter, a copy of the order requiring the evaluation shall be transmitted to the county designated mental health professional of the county in which the defendant was charged.

(2)(a) When a defendant is evaluated under RCW 10.77.060, the professional person shall make a recommen-

dation to the court whether the defendant should be examined by a county designated mental health professional for purposes of filing a petition under chapter 71.05 RCW whenever the court determines, and enters a finding that, the defendant is charged with: (i) A felony; or (ii) a nonfelony crime and: (A) Is charged with, or has a history of, one or more violent acts; (B) is a threat to public safety; (C) has previously been acquitted by reason of insanity; or (D) has previously been found incompetent pursuant to this chapter.

(b) The facility conducting the evaluation shall provide its report and recommendation to the court in which the criminal proceeding is pending. A copy of the report and recommendation shall be provided to the county designated mental health professional, the prosecuting attorney, the defense attorney, and the professional person at the local correctional facility where the defendant is being held. Upon request, the facility shall also provide copies of any source documents relevant to the evaluation to the county designated mental health professional. The report and recommendation shall be provided not less than twenty-four hours preceding the transfer of the defendant to the correctional facility in the county in which the criminal proceeding is pending.

(c) If the facility concludes, under RCW 10.77.060(3)(f), the person should be kept under further control, an evaluation shall be conducted of such person under chapter 71.05 RCW. The court shall order an evaluation be conducted by the appropriate county designated mental health professional: (i) Prior to release from confinement for such person who is convicted, if sentenced to confinement for twenty-four months or less; (ii) for any person who is acquitted; or (iii) for any person whose charges are dismissed pursuant to RCW 10.77.090(4).

(3) The county designated mental health professional shall provide written notification within twenty-four hours of the results of the determination whether to commence proceedings under chapter 71.05 RCW. The notification shall be provided to the persons identified in subsection (2)(b) of this section.

(4) The prosecuting attorney shall provide a copy of the results of any proceedings commenced by the county designated mental health professional under subsection (3) of this section to the facility conducting the evaluation under this chapter. [1998 c 297 § 35.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.070 Examination rights of defendant's expert or professional person. When the defendant wishes to be examined by a qualified expert or professional person of his or her own choice such examiner shall be permitted to have reasonable access to the defendant for the purpose of such examination, as well as to all relevant medical and psychological records and reports. [1998 c 297 § 36; 1973 1st ex.s. c 117 § 7.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.080 Motion for acquittal on grounds of insanity—Hearing—Findings. The defendant may move the court for a judgment of acquittal on the grounds of

insanity: **PROVIDED,** That a defendant so acquitted may not later contest the validity of his or her detention on the grounds that he or she did not commit the acts charged. At the hearing upon the motion the defendant shall have the burden of proving by a preponderance of the evidence that he or she was insane at the time of the offense or offenses with which he or she is charged. If the court finds that the defendant should be acquitted by reason of insanity, it shall enter specific findings in substantially the same form as set forth in RCW 10.77.040. If the motion is denied, the question may be submitted to the trier of fact in the same manner as other issues of fact. [1998 c 297 § 37; 1974 ex.s. c 198 § 7; 1973 1st ex.s. c 117 § 8.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.090 Stay of proceedings—Commitment—Findings—Evaluation, treatment—Extensions of commitment—Alternative procedures—Procedure in nonfelony charge. (Effective until March 1, 1999.) (1) If at any time during the pendency of an action and prior to judgment, the court finds following a report as provided in RCW 10.77.060, as now or hereafter amended, that the defendant is incompetent, the court shall order the proceedings against the defendant be stayed, except as provided in subsection (5) of this section, and, if the defendant is charged with a felony, may commit the defendant to the custody of the secretary, who shall place such defendant in an appropriate facility of the department for evaluation and treatment, or the court may alternatively order the defendant to undergo evaluation and treatment at some other facility, or under the guidance and control of some other person, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, but in any event, for no longer than a period of ninety days. A defendant found incompetent shall be evaluated at the direction of the secretary and a determination made whether the defendant is developmentally disabled. Such evaluation and determination shall be accomplished as soon as possible following the court's placement of the defendant in the custody of the secretary. When appropriate, and subject to available funds, if the defendant is determined to be developmentally disabled, he or she may be placed in a program specifically reserved for the treatment and training of persons with developmental disabilities where the defendant shall have the right to habilitation according to an individualized service plan specifically developed for the particular needs of the defendant. The program shall be separate from programs serving persons involved in any other treatment or habilitation program. The program shall be appropriately secure under the circumstances and shall be administered by developmental disabilities professionals who shall direct the habilitation efforts. The program shall provide an environment affording security appropriate with the charged criminal behavior and necessary to protect the public safety. The department may limit admissions of such persons to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. A copy of

the report shall be sent to the facility. On or before expiration of the initial ninety day period of commitment the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent. If the defendant is charged with a crime which is not a felony, the court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the county mental health professional to evaluate the defendant and commence proceedings under chapter 71.05 RCW if appropriate; and subsections (2) and (3) of this section shall not be applicable: PROVIDED, That, upon order of the court, the prosecutor may directly petition for fourteen days of involuntary treatment under chapter 71.05 RCW.

(2) If the court finds by a preponderance of the evidence that the defendant is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety day period, but it must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second ninety day period. The defendant, the defendant's attorney, the prosecutor, or the judge shall have the right to demand that the hearing on or before the expiration of the second ninety day period be before a jury. No extension shall be ordered for a second ninety-day period, nor for any subsequent period as provided in subsection (3) of this section if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension. If no demand is made, the hearing shall be before the court. The court or jury shall determine whether or not the defendant has become competent.

(3) At the hearing upon the expiration of the second ninety day period or at the end of the first ninety-day period, in the case of a developmentally disabled defendant, if the jury or court, as the case may be, finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and either civil commitment proceedings shall be instituted, if appropriate, or the court shall order the release of the defendant: PROVIDED, That the criminal charges shall not be dismissed if at the end of the second ninety-day period, or at the end of the first ninety-day period, in the case of a developmentally disabled defendant, the court or jury finds that the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, and that there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for an additional six months. At the end of said six month period, if the defendant remains incompetent, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted, if appropriate, or the court shall order release of the defendant.

(4) The fact that the defendant is unfit to proceed does not preclude any pretrial proceedings which do not require the personal participation of the defendant.

(5) A defendant receiving medication for either physical or mental problems shall not be prohibited from standing trial, if the medication either enables the defendant to understand the proceedings against him or her and to assist

in his or her own defense, or does not disable him or her from so understanding and assisting in his or her own defense.

(6) At or before the conclusion of any commitment period provided for by this section, the facility providing evaluation and treatment shall provide to the court a written report of examination which meets the requirements of RCW 10.77.060(3). [1989 c 420 § 5; 1979 ex.s. c 215 § 3; 1974 ex.s. c 198 § 8; 1973 1st ex.s. c 117 § 9.]

10.77.090 Stay of proceedings—Commitment—Findings—Evaluation, treatment—Extensions of commitment—Alternative procedures—Procedure in nonfelony charge. (Effective March 1, 1999.) (1)(a) If at any time during the pendency of an action and prior to judgment the court finds, following a report as provided in RCW 10.77.060, a defendant is incompetent the court shall order the proceedings against the defendant be stayed except as provided in subsection (7) of this section.

(b) If the defendant is charged with a felony and determined to be incompetent, the court shall commit the defendant to the custody of the secretary, who shall place such defendant in an appropriate facility of the department for evaluation and treatment, or the court may alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, but in any event, for no longer than a period of ninety days.

(c) A defendant found incompetent shall be evaluated at the direction of the secretary and a determination made whether the defendant is developmentally disabled. Such evaluation and determination shall be accomplished as soon as possible following the court's placement of the defendant in the custody of the secretary. When appropriate, and subject to available funds, if the defendant is determined to be developmentally disabled, he or she may be placed in a program specifically reserved for the treatment and training of persons with developmental disabilities where the defendant shall have the right to habilitation according to an individualized service plan specifically developed for the particular needs of the defendant. The program shall be separate from programs serving persons involved in any other treatment or habilitation program. The program shall be appropriately secure under the circumstances and shall be administered by developmental disabilities professionals who shall direct the habilitation efforts. The program shall provide an environment affording security appropriate with the charged criminal behavior and necessary to protect the public safety. The department may limit admissions of such persons to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. A copy of the report shall be sent to the facility.

(d)(i) If the defendant is:

(A) Charged with a nonfelony crime and has: (I) A history of one or more violent acts, or a pending charge of one or more violent acts; or (II) been previously acquitted by reason of insanity or been previously found incompetent under this chapter with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person; and

(B) Found by the court to be not competent; then

(C) The court shall order the secretary to place the defendant: (I) At a secure mental health facility in the custody of the department or an agency designated by the department for mental health treatment and restoration of competency. The placement shall not exceed fourteen days in addition to any unused time of the evaluation under RCW 10.77.060. The fourteen-day period shall be considered to include only the time the defendant is actually at the facility and shall be in addition to reasonable time for transport to or from the facility; (II) on conditional release for up to ninety days for mental health treatment and restoration of competency; or (III) any combination of (d)(i)(C)(I) and (II) of this subsection.

(ii) At the end of the mental health treatment and restoration period in (d)(i) of this subsection, or at any time a professional person determines competency has been, or is unlikely to be, restored the defendant shall be returned to court for a hearing. If, after notice and hearing, competency has been restored, the stay entered under (a) of this subsection shall be lifted. If competency has not been restored, the proceedings shall be dismissed. If the court concludes that competency has not been restored, but that further treatment within the time limits established by (d)(i) of this subsection is likely to restore competency, the court may order that treatment for purposes of competency restoration be continued. Such treatment may not extend beyond the combination of time provided for in (d)(i)(C)(I) and (II) of this subsection.

(iii)(A) If the proceedings are dismissed under (d)(ii) of this subsection and the defendant was on conditional release at the time of dismissal, the court shall order the county designated mental health professional within that county to evaluate the defendant pursuant to chapter 71.05 RCW. The evaluation may be conducted in any location chosen by the professional.

(B) If the defendant was in custody and not on conditional release at the time of dismissal, the defendant shall be detained and sent to an evaluation and treatment facility for up to seventy-two hours for evaluation for purposes of filing a petition under chapter 71.05 RCW.

(iv) If at any time during the proceeding the court finds, following notice and hearing, a defendant is not likely to regain competency, the proceedings shall be dismissed and the defendant shall be evaluated as provided in (d)(iii) of this subsection.

(e) If the defendant is charged with a crime that is not a felony and the defendant does not meet the criteria under (d) of this subsection, the court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the county designated mental health professional to evaluate the defendant and consider initial detention proceedings under chapter 71.05 RCW. The court must give notice to all parties at least twenty-four hours before the dismissal of any proceeding under this subsection (1)(e), and provide an

opportunity for a hearing on whether to dismiss the proceedings.

(2) On or before expiration of the initial ninety-day period of commitment under subsection (1)(b) of this section the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent.

(3) If the court finds by a preponderance of the evidence that a defendant charged with a felony is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety-day period, but it must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second ninety-day period. The defendant, the defendant's attorney, or the prosecutor shall have the right to demand that the hearing be before a jury. No extension shall be ordered for a second ninety-day period, nor for any subsequent period as provided in subsection (4) of this section if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension.

(4) For persons charged with a felony, at the hearing upon the expiration of the second ninety-day period or at the end of the first ninety-day period, in the case of a developmentally disabled defendant, if the jury or court finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant: PROVIDED, That the criminal charges shall not be dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for an additional six months. At the end of the six-month period, if the defendant remains incompetent, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order release of the defendant.

(5) If the defendant is referred to the county designated mental health professional for consideration of initial detention proceedings under chapter 71.05 RCW pursuant to this chapter, the county designated mental health professional shall provide prompt written notification of the results of the determination whether to commence initial detention proceedings under chapter 71.05 RCW, and whether the person was detained. The notification shall be provided to the court in which the criminal action was pending, the prosecutor, the defense attorney in the criminal action, and the facility that evaluated the defendant for competency.

(6) The fact that the defendant is unfit to proceed does not preclude any pretrial proceedings which do not require the personal participation of the defendant.

(7) A defendant receiving medication for either physical or mental problems shall not be prohibited from standing trial, if the medication either enables the defendant to understand the proceedings against him or her and to assist in his or her own defense, or does not disable him or her from so understanding and assisting in his or her own defense.

(8) At or before the conclusion of any commitment period provided for by this section, the facility providing evaluation and treatment shall provide to the court a written report of examination which meets the requirements of RCW 10.77.060(3). [1998 c 297 § 38; 1989 c 420 § 5; 1979 ex.s. c 215 § 3; 1974 ex.s. c 198 § 8; 1973 1st ex.s. c 117 § 9.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.095 Findings—Developmental disabilities.

The legislature finds that among those persons who endanger the safety of others by committing crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity. The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities. Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety. [1998 c 297 § 28; 1989 c 420 § 1. Formerly RCW 10.77.005.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.097 Relevant records and reports shall accompany defendant upon transfer. A copy of relevant records and reports as defined by the department, in consultation with the department of corrections, made pursuant to this chapter, and including relevant information necessary to meet the requirements of RCW 10.77.065(2) and 10.77.090, shall accompany the defendant upon transfer to a mental health facility or a correctional institution or facility. [1998 c 297 § 47.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.100 Experts or professional persons as witnesses. Subject to the rules of evidence, experts or professional persons who have reported pursuant to this chapter may be called as witnesses at any proceeding held

pursuant to this chapter. Both the prosecution and the defendant may summon any other qualified expert or professional persons to testify. [1974 ex.s. c 198 § 9; 1973 1st ex.s. c 117 § 10.]

10.77.110 Acquittal of felony—Discharge, hospitalization, conditional release—Acquittal of nonfelony—Release or custody for evaluation—Evaluation, treatment.

(Effective until March 1, 1999.) (1) If a defendant is acquitted of a felony by reason of insanity, and it is found that he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct the defendant's final discharge. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

(2) If the defendant has been found not guilty by reason of insanity and a substantial danger, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, so as to require treatment then the secretary shall immediately cause the defendant to be evaluated to ascertain if the defendant is developmentally disabled. When appropriate, and subject to available funds, the defendant may be committed to a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services according to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The treatment program shall provide physical security to a degree consistent with the finding that the defendant is dangerous and may incorporate varying conditions of security and alternative sites when the dangerousness of any particular defendant makes this necessary. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

(3) If it is found that such defendant is not a substantial danger to other persons, and does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, but that he or she is in need of control by the court or other persons or institutions, the court shall direct the defendant's conditional release. If the defendant is acquitted by reason of insanity of a crime which is not a felony, the court shall order the defendant's release or order the defendant's continued custody only for a reasonable time to allow the county-designated mental-health professional to evaluate the individual and to proceed with civil commitment

pursuant to chapter 71.05 RCW, if considered appropriate. [1989 c 420 § 6; 1983 c 25 § 1; 1979 ex.s. c 215 § 4; 1974 ex.s. c 198 § 10; 1973 1st ex.s. c 117 § 11.]

10.77.110 Acquittal of crime—Discharge, hospitalization, conditional release—Release or custody for evaluation—Evaluation, treatment. (*Effective March 1, 1999.*) (1) If a defendant is acquitted of a crime by reason of insanity, and it is found that he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct the defendant's final discharge. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

(2) If the defendant has been found not guilty by reason of insanity and a substantial danger, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, so as to require treatment then the secretary shall immediately cause the defendant to be evaluated to ascertain if the defendant is developmentally disabled. When appropriate, and subject to available funds, the defendant may be committed to a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services according to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The treatment program shall provide physical security to a degree consistent with the finding that the defendant is dangerous and may incorporate varying conditions of security and alternative sites when the dangerousness of any particular defendant makes this necessary. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

(3) If it is found that such defendant is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, but that he or she is in need of control by the court or other persons or institutions, the court shall direct the defendant's conditional release. [1998 c 297 § 39; 1989 c 420 § 6; 1983 c 25 § 1; 1979 ex.s. c 215 § 4; 1974 ex.s. c 198 § 10; 1973 1st ex.s. c 117 § 11.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.120 Confinement of committed person—Custody—Hearings—Discharge. The secretary shall

forthwith provide adequate care and individualized treatment at one or several of the state institutions or facilities under his or her direction and control wherein persons committed as criminally insane may be confined. Such persons shall be under the custody and control of the secretary to the same extent as are other persons who are committed to the secretary's custody, but such provision shall be made for their control, care, and treatment as is proper in view of their condition. In order that the secretary may adequately determine the nature of the mental illness or developmental disability of the person committed to him or her as criminally insane, and in order for the secretary to place such individuals in a proper facility, all persons who are committed to the secretary as criminally insane shall be promptly examined by qualified personnel in such a manner as to provide a proper evaluation and diagnosis of such individual. The examinations of all developmentally disabled persons committed under this chapter shall be performed by developmental disabilities professionals. Any person so committed shall not be discharged from the control of the secretary save upon the order of a court of competent jurisdiction made after a hearing and judgment of discharge.

Whenever there is a hearing which the committed person is entitled to attend, the secretary shall send him or her in the custody of one or more department employees to the county where the hearing is to be held at the time the case is called for trial. During the time the person is absent from the facility, he or she shall be confined in a facility designated by and arranged for by the department, and shall at all times be deemed to be in the custody of the department employee and provided necessary treatment. If the decision of the hearing remits the person to custody, the department employee shall forthwith return the person to such institution or facility designated by the secretary. If the state appeals an order of discharge, such appeal shall operate as a stay, and the person in custody shall so remain and be forthwith returned to the institution or facility designated by the secretary until a final decision has been rendered in the cause. [1989 c 420 § 7; 1974 ex.s. c 198 § 11; 1973 1st ex.s. c 117 § 12.]

10.77.140 Periodic examinations—Developmentally disabled—Reports—Notice to court. Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his or her mental condition made by one or more experts or professional persons at least once every six months. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine him or her, and such expert or professional person shall have access to all hospital records concerning the person. In the case of a committed or conditionally released person who is developmentally disabled, the expert shall be a developmental disabilities professional. The secretary, upon receipt of the periodic report, shall provide written notice to the court of commitment of compliance with the requirements of this section. [1998 c 297 § 40; 1989 c 420 § 8; 1974 ex.s. c 198 § 12; 1973 1st ex.s. c 117 § 14.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.150 Conditional release—Application—Order—Procedure. (1) Persons examined pursuant to RCW 10.77.140 may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered the person's commitment the person's application for conditional release as well as the secretary's recommendations concerning the application and any proposed terms and conditions upon which the secretary reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) The court of the county which ordered the person's commitment, upon receipt of an application for conditional release with the secretary's recommendation for conditional release, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary. The prosecuting attorney shall represent the state at such hearings and shall have the right to have the patient examined by an expert or professional person of the prosecuting attorney's choice. If the committed person is indigent, and he or she so requests, the court shall appoint a qualified expert or professional person to examine the person on his or her behalf. The issue to be determined at such a hearing is whether or not the person may be released conditionally without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary. If the order of conditional release includes a requirement for the committed person to report to a community corrections officer, the order shall also specify that the conditionally released person shall be under the supervision of the secretary of corrections or such person as the secretary of corrections may designate and shall follow explicitly the instructions of the secretary of corrections including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer prior to making any change in the offender's address or employment.

(3) If the court determines that receiving regular or periodic medication or other medical treatment shall be a condition of the committed person's release, then the court shall require him or her to report to a physician or other medical or mental health practitioner for the medication or treatment. In addition to submitting any report required by RCW 10.77.160, the physician or other medical or mental health practitioner shall immediately upon the released person's failure to appear for the medication or treatment report the failure to the court, to the prosecuting attorney of the county in which the released person was committed, and to the supervising community corrections officer.

(4) Any person, whose application for conditional release has been denied, may reapply after a period of six

months from the date of denial. [1998 c 297 § 41; 1993 c 31 § 6; 1982 c 112 § 1; 1974 ex.s. c 198 § 13; 1973 1st ex.s. c 117 § 15.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.155 Conditional release, furlough—Secretary's recommendation. No court may, without a hearing, enter an order conditionally releasing or authorizing the furlough of a person committed under this chapter, unless the secretary has recommended the release or furlough. If the secretary has not recommended the release or furlough, a hearing shall be held under RCW 10.77.150. [1994 c 150 § 1.]

10.77.160 Conditional release—Reports as to adherence to terms and conditions of release. When a conditionally released person is required by the terms of his or her conditional release to report to a physician, department of corrections community corrections officer, or medical or mental health practitioner on a regular or periodic basis, the physician, department of corrections community corrections officer, medical or mental health practitioner, or other such person shall monthly, for the first six months after release and semiannually thereafter, or as otherwise directed by the court, submit to the court, the secretary, the institution from which released, and to the prosecuting attorney of the county in which the person was committed, a report stating whether the person is adhering to the terms and conditions of his or her conditional release. [1993 c 31 § 7; 1973 1st ex.s. c 117 § 16.]

10.77.163 Furlough—Notice to law enforcement agencies—Time requirements—Temporary restraining order. (1) Before a person committed under this chapter is permitted temporarily to leave a treatment facility for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county to which the person is released and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision conditionally to release the person. The notice shall be provided at least forty-five days before the anticipated release and shall describe the conditions under which the release is to occur.

(2) In addition to the notice required by subsection (1) of this section, the superintendent of each state institution designated for the custody, care, and treatment of persons committed under this chapter shall notify appropriate law enforcement agencies through the state patrol communications network of the furloughs of persons committed under RCW 10.77.090 or 10.77.110. Notification shall be made at least thirty days before the furlough, and shall include the name of the person, the place to which the person has permission to go, and the dates and times during which the person will be on furlough.

(3) Upon receiving notice that a person committed under this chapter is being temporarily released under subsection (1) of this section, the prosecuting attorney may seek a temporary restraining order to prevent the release of the per-

son on the grounds that the person is dangerous to self or others.

(4) The notice requirements contained in this section shall not apply to emergency medical furloughs.

(5) The existence of the notice requirements contained in this section shall not require any extension of the release date in the event the release plan changes after notification.

(6) The notice provisions of this section are in addition to those provided in RCW 10.77.205. [1994 c 129 § 4; 1990 c 3 § 106; 1989 c 420 § 9; 1983 c 122 § 2.]

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Index, part headings not law—Severability—Effective dates—

Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.165 Escape or disappearance—Notification requirements. In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person on conditional release to the department of social and health services, the superintendent, or in the event of a disappearance of such a person on conditional release to the department of corrections, the community corrections officer shall, as appropriate, notify local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person. The notice provisions of this section are in addition to those provided in RCW 10.77.205. [1993 c 31 § 8; 1990 c 3 § 107; 1989 c 420 § 10; 1983 c 122 § 3.]

Index, part headings not law—Severability—Effective dates—

Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.170 Payments to conditionally released persons. As funds are available, the secretary may provide payment to a person conditionally released pursuant to RCW 10.77.150, consistent with the provisions of RCW 72.02.100 and 72.02.110, and may adopt rules and regulations to do so. [1973 1st ex.s. c 117 § 17.]

10.77.180 Conditional release—Periodic review of case. Each person conditionally released pursuant to RCW 10.77.150 shall have his or her case reviewed by the court which conditionally released him or her no later than one year after such release and no later than every two years thereafter, such time to be scheduled by the court. Review may occur in a shorter time or more frequently, if the court, in its discretion, on its own motion, or on motion of the person, the secretary of social and health services, the secretary of corrections, medical or mental health practitioner, or the prosecuting attorney, so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released. The court in making its determination shall be aided by the periodic reports filed pursuant to RCW 10.77.140 and 10.77.160, and the opinions of the secretary and other experts or professional persons. [1998 c 297 § 42; 1993 c 31 § 9; 1974 ex.s. c 198 § 14; 1973 1st ex.s. c 117 § 18.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.190 Conditional release—Revocation or modification of terms—Procedure. (1) Any person submitting reports pursuant to RCW 10.77.160, the secretary, or the prosecuting attorney may petition the court to, or the court on its own motion may schedule an immediate hearing for the purpose of modifying the terms of conditional release if the petitioner or the court believes the released person is failing to adhere to the terms and conditions of his or her conditional release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the secretary of social and health services, the secretary of corrections, or the court, after examining the report filed with them pursuant to RCW 10.77.160, or based on other information received by them, reasonably believes that a conditionally released person is failing to adhere to the terms and conditions of his or her conditional release the court or secretary of social and health services or the secretary of corrections may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. The court shall be notified before the close of the next judicial day of the apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court or secretary of social and health services or the secretary of corrections or their designees shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(3) If the hospital or facility designated to provide outpatient care determines that a conditionally released person presents a threat to public safety, the hospital or facility shall immediately notify the secretary of social and health services or the secretary of corrections or their designees. The secretary shall order that the conditionally released person be apprehended and taken into custody.

(4) The court, upon receiving notification of the apprehension, shall promptly schedule a hearing. The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his or her release, or whether the person presents a threat to public safety. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or his or her conditional release shall be revoked and he or she shall be committed subject to release only in accordance with provisions of this chapter. [1998 c 297 § 43; 1993 c 31 § 10; 1982 c 112 § 2; 1974 ex.s. c 198 § 15; 1973 1st ex.s. c 117 § 19.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.200 Final discharge—Procedure. (1) Upon application by the committed or conditionally released person, the secretary shall determine whether or not reasonable grounds exist for final discharge. In making this determination, the secretary may consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case. If the secretary approves the final

discharge he or she then shall authorize the person to petition the court.

(2) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for final discharge, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the prosecuting attorney's choice. If the petitioner is indigent, and the person so requests, the court shall appoint a qualified expert or professional person to examine him or her. If the petitioner is developmentally disabled, the examination shall be performed by a developmental disabilities professional. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the petitioner no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(3) Nothing contained in this chapter shall prohibit the patient from petitioning the court for final discharge or conditional release from the institution in which he or she is committed. The issue to be determined on such proceeding is whether the petitioner, as a result of a mental disease or defect, is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus. [1998 c 297 § 44; 1993 c 31 § 11; 1989 c 420 § 11; 1983 c 25 § 2; 1974 ex.s. c 198 § 16; 1973 1st ex.s. c 117 § 20.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.205 Persons acquitted of sex or violent offense due to insanity, in custody of department—Notification of release, escape, etc.—To whom given—Definitions.

(1)(a) At the earliest possible date, and in no event later than thirty days before conditional release, final discharge, authorized furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of the conditional release, final discharge, authorized furlough, or transfer of a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is now in the custody of the department pursuant to this chapter, to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) In addition to the notice requirements of (a) and (b) of this subsection, the superintendent shall comply with RCW 10.77.163.

(d) The thirty-day notice requirement contained in (a) and (b) of this subsection shall not apply to emergency medical furloughs.

(e) The existence of the notice requirements in (a) and (b) of this subsection shall not require any extension of the release date in the event the release plan changes after notification.

(2) If a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is committed under this chapter escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim, if any, of the crime for which the person was committed or the victim's next of kin if the crime was a homicide. The superintendent shall also notify appropriate persons pursuant to RCW 10.77.165. If the person is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children;

(d) "Authorized furlough" means a furlough granted after compliance with RCW 10.77.163;

(e) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [1994 c 129 § 5; 1992 c 186 § 8; 1990 c 3 § 104.]

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Severability—1992 c 186: See note following RCW 9A.46.110

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.207 Persons acquitted of sex offense due to insanity—Release of information authorized. In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information necessary to protect the public concerning a person who was acquitted of a sex offense as defined in RCW 9.94A.030 due to insanity and was subsequently committed to the department pursuant to this chapter. [1990 c 3 § 105.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.210 Right to adequate care and treatment—Records and reports. (1) Any person involuntarily detained, hospitalized, or committed pursuant to the provisions of this chapter shall have the right to adequate care and individualized treatment. The person who has custody of the patient or is in charge of treatment shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations of the patient that have been filed with the secretary pursuant to this chapter. Except as provided in RCW 10.77.205 and 4.24.550 regarding the release of information concerning insane offenders who are acquitted of sex offenses and subsequently committed pursuant to this chapter, all records and reports made pursuant to this chapter, shall be made available only upon request, to the committed person, to his or her attorney, to his or her personal physician, to the supervising community corrections officer, to the prosecuting attorney, to the court, to the protection and advocacy agency, or other expert or professional persons who, upon proper showing, demonstrates a need for access to such records. All records and reports made pursuant to this chapter shall also be made available, upon request, to the department of corrections or the indeterminate sentence review board if the person was on parole, probation, or community supervision at the time of detention, hospitalization, or commitment or the person is subsequently convicted for the crime for which he or she was detained, hospitalized, or committed pursuant to this chapter.

(2) All relevant records and reports as defined by the department in rule shall be made available, upon request, to criminal justice agencies as defined in RCW 10.97.030. [1998 c 297 § 45; 1993 c 31 § 12; 1990 c 3 § 108; 1989 c 420 § 12; 1983 c 196 § 3; 1973 1st ex.s. c 117 § 21.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.2101 Implementation of legislative intent. In developing rules under RCW 10.77.210(2), the department shall implement the following legislative intent: Increasing public safety; and making decisions based on a person's current conduct and mental condition rather than the classification of the charges. [1998 c 297 § 46.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.220 Incarceration in correctional institution or facility prohibited—Exceptions. No person confined pursuant to this chapter shall be incarcerated in a state correctional institution or facility: PROVIDED, That nothing herein shall prohibit confinement in a mental health facility located wholly within a correctional institution. Confinement in a county jail or other local facility while awaiting either placement in a treatment program or a court hearing pursuant to this chapter is permitted for no more than seven days. [1982 c 112 § 3; 1974 ex.s. c 198 § 17; 1973 1st ex.s. c 117 § 22.]

10.77.230 Appellate review. Either party may seek appellate review of the judgment of any hearing held pursuant to the provisions of this chapter. [1988 c 202 § 16; 1974 ex.s. c 198 § 18; 1973 1st ex.s. c 117 § 23.]

Rules of court: Cf. *RAP 2.2, 18.22.*

Severability—1988 c 202: See note following RCW 2.24.050.

10.77.240 Existing rights not affected. Nothing in this chapter shall prohibit a person presently committed from exercising a right presently available to him for obtaining release from confinement, including the right to petition for a writ of habeas corpus. [1973 1st ex.s. c 117 § 24.]

10.77.250 Responsibility for costs—Reimbursement. The department shall be responsible for all costs relating to the evaluation and treatment of persons committed to it pursuant to any provisions of this chapter, and the logistical and supportive services pertaining thereto. Reimbursement may be obtained by the department pursuant to RCW 43.20B.330. [1987 c 75 § 1; 1985 c 245 § 1; 1973 1st ex.s. c 117 § 25.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

10.77.800 Evaluation of chapter 297, Laws of 1998—Recidivism, competency restoration, information sharing. (1) The Washington state institute for public policy shall conduct an evaluation of chapter 297, Laws of 1998 to determine:

(a) Whether there has been a reduction in recidivism for mentally ill offenders who are felons or who meet the criteria specified in RCW 10.77.090(1)(d) and received mental health services as a result of the provisions of chapters 10.77 and 71.05 RCW.

(b) The number of nonfelony offenders who have been referred to competency restoration under RCW 10.77.090(1)(d)(i)(C) and the percentage of such offenders who have been restored to competency within the allotted time for felons, nonfelony offenders meeting the criteria under RCW 10.77.090(1)(d), and the nonfelony offenders who do not meet this criteria.

(c) Whether the information-sharing provisions of chapter 297, Laws of 1998 are adequate to provide necessary information to the affected parties. The analysis shall include findings as to whether the flow of information is resulting in the efficient usage of the information and whether there are revisions in the flow which would better allow the courts, professional persons, and parties to proceedings to make better use of the information.

(2) The evaluation shall be presented to the legislature on or before November 15, 2003. [1998 c 297 § 54.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

10.77.900 Savings—Construction—1973 1st ex.s. c 117. (1) Any acts done before July 1, 1973 and any proceedings then pending and any constitutional right or any action taken in any proceeding pending under statutes in effect prior to July 1, 1973 are not impaired by this chapter.

(2) This chapter shall also apply to persons committed under prior law as incompetent to stand trial or as being criminally insane and to any proceedings in court then pending or thereafter commenced regardless of when the proceedings were commenced, except to the extent that in the opinion of the court, the former procedure should continue to be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedures of this chapter. [1973 1st ex.s. c 117 § 26.]

10.77.910 Severability—1973 1st ex.s. c 117. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or its application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 117 § 27.]

10.77.920 Chapter successor to chapter 10.76 RCW. Sections 1 through 27 of this act shall constitute a new chapter in Title 10 RCW, and shall be considered the successor chapter to chapter 10.76 RCW. [1973 1st ex.s. c 117 § 28.]

10.77.930 Effective date—1973 1st ex.s. c 117. This act shall take effect on July 1, 1973. [1973 1st ex.s. c 117 § 30.]

10.77.940 Equal application of 1989 c 420—Evaluation for developmental disability. The provisions of *this act shall apply equally to persons **presently in the custody of the department who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for placement in a program specifically reserved for the treatment and training of persons with developmental disabilities. [1989 c 420 § 17.]

Reviser's note: *(1) "this act" [1989 c 420] consists of the enactment of RCW 10.77.005, 71.05.035, and 71.05.940, the amendment of RCW 10.77.010, 10.77.060, 10.77.090, 10.77.110, 10.77.120, 10.77.140, 10.77.163, 10.77.165, 10.77.200, 10.77.210, 71.05.020, 71.05.300, and 71.05.320, and a temporary study section [§ 19].

** (2) The act took effect on May 13, 1989.

Chapter 10.79 SEARCHES AND SEIZURES

Sections

- 10.79.015 Other grounds for issuance of search warrant.
- 10.79.020 To whom directed—Contents.
- 10.79.040 Search without warrant unlawful.
- 10.79.045 Search without warrant unlawful—Penalty.
- 10.79.050 Restoration of stolen property to owner—Duties of officers.
- 10.79.060 Strip, body cavity searches—Legislative intent.
- 10.79.070 Strip, body cavity searches—Definitions.
- 10.79.080 Strip, body cavity searches—Warrant, authorization, report.
- 10.79.090 Strip, body cavity searches—Medical care not precluded.
- 10.79.100 Strip, body cavity searches—Standards for conducting.
- 10.79.110 Strip, body cavity searches—Actions for damages, injunctive relief.
- 10.79.120 Strip, body cavity searches—Application of RCW 10.79.130 through 10.79.160.
- 10.79.130 Strip, body cavity searches—Warrant required—Exceptions.
- 10.79.140 Strip, body cavity searches—Uncategorized searches—Determination of reasonable suspicion, probable cause—Less-intrusive alternatives.
- 10.79.150 Strip, body cavity searches—Written record required, contents—Unnecessary persons prohibited.
- 10.79.160 Strip, body cavity searches—Physical examinations for public health purposes excluded.
- 10.79.170 Strip, body cavity searches—Nonliability when search delayed.

Rules of court: *Search and seizure—CrR 2.3; CrRLJ 2.3.*

Alcoholic beverage control, search and seizure: Chapter 66.32 RCW.

Controlled substances, search and seizure: RCW 69.50.509.

10.79.015 Other grounds for issuance of search warrant. Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

(1) To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

(2) To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

(3) To search for and seize any evidence material to the investigation or prosecution of any homicide or any felony: PROVIDED, That if the evidence is sought to be secured from any radio or television station or from any regularly published newspaper, magazine or wire service, or from any employee of such station, wire service or publication, the evidence shall be secured only through a subpoena duces tecum unless: (a) There is probable cause to believe that the person or persons in possession of the evidence may be involved in the crime under investigation; or (b) there is probable cause to believe that the evidence sought to be seized will be destroyed or hidden if subpoena duces tecum procedures are followed. As used in this subsection, "person or persons" includes both natural and judicial persons.

(4) To search for and seize any instrument, apparatus or device used to obtain telephone or telegraph service in violation of *RCW 9.45.240. [1980 c 52 § 1; 1972 ex.s. c 75 § 2; 1969 c 83 § 1; 1949 c 86 § 1; Code 1881 § 986; 1873 p 216 § 154; 1854 p 101 § 2; Rem. Supp. 1949 § 2238. Formerly RCW 10.79.010, part.]

*Reviser's note: RCW 9.45.240 was recodified as RCW 9.26A.110 pursuant to 1990 c 11 § 5.

10.79.020 To whom directed—Contents. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and property, or things to be searched for shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case. [Code 1881 § 969; 1873 p 216 § 155; 1854 p 101 § 3; RRS § 2239.]

10.79.040 Search without warrant unlawful. It shall be unlawful for any policeman or other peace officer to enter and search any private dwelling house or place of residence without the authority of a search warrant issued upon a complaint as by law provided. [1921 c 71 § 1; RRS § 2240-1. FORMER PART OF SECTION: 1921 c 71 § 2; RRS § 2240-2, now codified as RCW 10.79.045.]

10.79.045 Search without warrant unlawful—Penalty. Any policeman or other peace officer violating the provisions of RCW 10.79.040 shall be guilty of a gross misdemeanor. [1921 c 71 § 2; RRS § 2240-2. Formerly RCW 10.79.040, part.]

10.79.050 Restoration of stolen property to owner—Duties of officers. All property obtained by larceny, robbery or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he shall be answerable for the same, and shall annex a schedule thereof to his return of the warrant. [Code 1881 § 851; 1873 p 192 § 57; 1854 p 84 § 51; RRS § 2129.]

10.79.060 Strip, body cavity searches—Legislative intent. It is the intent of the legislature to establish policies regarding the practice of strip searching persons booked into holding, detention, or local correctional facilities. It is the intent of the legislature to restrict the practice of strip searching and body cavity searching persons booked into holding, detention, or local correctional facilities to those situations where such searches are necessary. [1983 1st ex.s. c 42 § 1.]

Effective date—1983 1st ex.s. c 42: "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 on July 1, 1983." [1983 1st ex.s. c 42 § 10.]

Severability—1983 1st ex.s. c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 42 § 9.]

10.79.070 Strip, body cavity searches—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 10.79.060 through 10.79.110.

(1) "Strip search" means having a person remove or arrange some or all of his or her clothing so as to permit an inspection of the genitals, buttocks, anus, or undergarments of the person or breasts of a female person.

(2) "Body cavity search" means the touching or probing of a person's body cavity, whether or not there is actual penetration of the body cavity.

(3) "Body cavity" means the stomach or rectum of a person and the vagina of a female person.

(4) "Law enforcement agency" and "law enforcement officer" include local departments of corrections created pursuant to RCW 70.48.090(3) and employees thereof. [1983 1st ex.s. c 42 § 2.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.080 Strip, body cavity searches—Warrant, authorization, report. (1) No person may be subjected to a body cavity search by or at the direction of a law enforcement agency unless a search warrant is issued pursuant to superior court criminal rules.

(2) No law enforcement officer may seek a warrant for a body cavity search without first obtaining specific authorization for the body cavity search from the ranking shift supervisor of the law enforcement authority. Authorization for the body cavity search may be obtained electronically: PROVIDED, That such electronic authorization shall be reduced to writing by the law enforcement officer seeking the authorization and signed by the ranking supervisor as soon as possible thereafter.

(3) Before any body cavity search is authorized or conducted, a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things otherwise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed. No body cavity search shall be authorized or conducted unless these other methods do not satisfy the safety, security, or evidentiary concerns of the law enforcement agency.

(4) A law enforcement officer requesting a body cavity search shall prepare and sign a report regarding the body cavity search. The report shall include:

(a) A copy of the written authorization required under subsection (2) of this section;

(b) A copy of the warrant and any supporting documents required under subsection (1) of this section;

(c) The name and sex of all persons conducting or observing the search;

(d) The time, date, place, and description of the search; and

(e) A statement of the results of the search and a list of any items removed from the person as a result of the search.

The report shall be retained as part of the law enforcement agency's records. [1983 1st ex.s. c 42 § 3.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.090 Strip, body cavity searches—Medical care not precluded. Nothing in RCW 10.79.080 or this section

may be construed as precluding or preventing the administration of medical care to persons requiring immediate medical care or requesting medical care. [1983 1st ex.s. c 42 § 4.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060

10.79.100 Strip, body cavity searches—Standards for conducting. (1) Persons conducting a strip search shall not touch the person being searched except as reasonably necessary to effectuate the strip search of the person.

(2) Any body cavity search must be performed under sanitary conditions and conducted by a physician, registered nurse, or physician's assistant, licensed to practice in this state, who is trained in the proper medical process and the potential health problems associated with a body cavity search. No health professional authorized by this subsection to conduct a body cavity search shall be held liable in any civil action if the search is conducted in a manner that meets the standards and requirements of RCW 4.24.290 and 7.70.040.

(3) Except as provided in subsection (7) of this section, a strip search or body cavity search, as well as presearch undressing or postsearch dressing, shall occur at a location made private from the observation of persons not physically conducting the search. A strip search or body cavity search shall be performed or observed only by persons of the same sex as the person being searched, except for licensed medical professionals as required by subsection (2) of this section.

(4) Except as provided in subsection (5) of this section, no person may be present or observe during the search unless the person is necessary to conduct the search or to ensure the safety of those persons conducting the search.

(5) Nothing in this section prohibits a person upon whom a body cavity search is to be performed from having a readily available person of his or her choosing present at the time the search is conducted. However, the person chosen shall not be a person being held in custody by a law enforcement agency.

(6) RCW 10.79.080 and this section shall not be interpreted as expanding or diminishing the authority of a law enforcement officer with respect to searches incident to arrest or investigatory stop in public.

(7) A strip search of a person housed in a holding, detention, or local correctional facility to search for and seize a weapon may be conducted at other than a private location if there arises a specific threat to institutional security that reasonably requires such a search or if all persons in the facility are being searched for the discovery of weapons or contraband. [1983 1st ex.s. c 42 § 5.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.110 Strip, body cavity searches—Actions for damages, injunctive relief. (1) A person who suffers damage or harm as a result of a violation of RCW 10.79.080, 10.79.090, 10.79.100, or 10.79.130 through 10.79.170 may bring a civil action to recover actual damages sustained by him or her. The court may, in its discretion, award injunctive and declaratory relief as it deems necessary.

(2) RCW 10.79.080, 10.79.090, 10.79.100, and 10.79.130 through 10.79.170 shall not be construed as limiting any constitutional, common law, or statutory right of any person regarding any action for damages or injunctive relief, or as precluding the prosecution under another provision of law of any law enforcement officer or other person who has violated RCW 10.79.080, 10.79.090, 10.79.100, or 10.79.130 through 10.79.170. [1986 c 88 § 7; 1983 1st ex.s. c 42 § 6.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.120 Strip, body cavity searches—Application of RCW 10.79.130 through 10.79.160. RCW 10.79.130 through 10.79.160 apply to any person in custody at a holding, detention, or local correctional facility, other than a person committed to incarceration by order of a court, regardless of whether an arrest warrant or other court order was issued before the person was arrested or otherwise taken into custody unless the court issuing the warrant has determined that the person shall not be released on personal recognizance, bail, or bond. RCW 10.79.130 through 10.79.160 do not apply to a person held for post-conviction incarceration for a criminal offense. The definitions and remedies provided by RCW 10.79.070 and 10.79.110 apply to RCW 10.79.130 through 10.79.160. [1986 c 88 § 1.]

10.79.130 Strip, body cavity searches—Warrant required—Exceptions. (1) No person to whom this section is made applicable by RCW 10.79.120 may be strip searched without a warrant unless:

(a) There is a reasonable suspicion to believe that a strip search is necessary to discover weapons, criminal evidence, contraband, or other thing concealed on the body of the person to be searched, that constitutes a threat to the security of a holding, detention, or local correctional facility;

(b) There is probable cause to believe that a strip search is necessary to discover other criminal evidence concealed on the body of the person to be searched, but not constituting a threat to facility security; or

(c) There is a reasonable suspicion to believe that a strip search is necessary to discover a health condition requiring immediate medical attention.

(2) For the purposes of subsection (1) of this section, a reasonable suspicion is deemed to be present when the person to be searched has been arrested for:

(a) A violent offense as defined in RCW 9.94A.030 or any successor statute;

(b) An offense involving escape, burglary, or the use of a deadly weapon; or

(c) An offense involving possession of a drug or controlled substance under chapter 69.41, 69.50, or 69.52 RCW or any successor statute. [1986 c 88 § 2.]

10.79.140 Strip, body cavity searches—Uncategorized searches—Determination of reasonable suspicion, probable cause—Less-intrusive alternatives. (1) A person to whom this section is made applicable by RCW 10.79.120 who has not been arrested for an offense within one of the categories specified in RCW 10.79.130(2) may nevertheless be strip searched, but only upon an

individualized determination of reasonable suspicion or probable cause as provided in this section.

(2) With the exception of those situations in which reasonable suspicion is deemed to be present under RCW 10.79.130(2), no strip search may be conducted without the specific prior written approval of the jail unit supervisor on duty. Before any strip search is conducted, reasonable efforts must be made to use other less-intrusive means, such as pat-down, electronic metal detector, or clothing searches, to determine whether a weapon, criminal evidence, contraband, or other thing is concealed on the body, or whether a health condition requiring immediate medical attention is present. The determination of whether reasonable suspicion or probable cause exists to conduct a strip search shall be made only after such less-intrusive means have been used and shall be based on a consideration of all information and circumstances known to the officer authorizing the strip search, including but not limited to the following factors:

- (a) The nature of the offense for which the person to be searched was arrested;
- (b) The prior criminal record of the person to be searched; and
- (c) Physically violent behavior of the person to be searched, during or after the arrest. [1986 c 88 § 3.]

10.79.150 Strip, body cavity searches—Written record required, contents—Unnecessary persons prohibited. (1) A written record of any strip search shall be maintained in the individual file of each person strip searched.

(2) With respect to any strip search conducted under RCW 10.79.140, the record shall contain the following information:

- (a) The name of the supervisor authorizing the strip search;
- (b) The specific facts constituting reasonable suspicion to believe that the strip search was necessary;
- (c) The name and serial number of the officer conducting the strip search and of all other persons present or observing during any part of the strip search;
- (d) The time, date, and place of the strip search; and
- (e) Any weapons, criminal evidence, contraband, or other thing, or health condition discovered as a result of the strip search.

(3) With respect to any strip search conducted under RCW 10.79.130(2), the record shall contain, in addition to the offense or offenses for which the person searched was arrested, the information required by subsection (2)(c), (d), and (e) of this section.

(4) The record may be included or incorporated in existing forms used by the facility, including the booking form required under the Washington Administrative Code. A notation of the name of the person strip searched shall also be entered in the log of daily activities or other chronological record, if any, maintained pursuant to the Washington Administrative Code.

(5) Except at the request of the person to be searched, no person may be present or observe during the strip search unless necessary to conduct the search. [1986 c 88 § 4.]

10.79.160 Strip, body cavity searches—Physical examinations for public health purposes excluded. Physical examinations conducted by licensed medical professionals solely for public health purposes under separate statutory authority shall not be considered searches for purposes of RCW 10.79.120, 10.79.130, and 10.79.140. [1986 c 88 § 5.]

10.79.170 Strip, body cavity searches—Nonliability when search delayed. No governmental entity and no employee or contracting agent of a governmental entity shall be liable for injury, death, or damage caused by a person in custody when the injury, death, or damage is caused by or made possible by contraband that would have been discovered sooner but for the delay caused by having to seek a search warrant under RCW 10.79.080 or 10.79.130 through 10.79.160. [1986 c 88 § 6.]

Chapter 10.82

COLLECTION AND DISPOSITION OF FINES AND COSTS

Sections

- 10.82.010 Execution for fines and costs.
 - 10.82.020 Stay of execution for sixty days on recognizance.
 - 10.82.025 Effect of recognizance—Execution of judgment after sixty days.
 - 10.82.030 Commitment for failure to pay fine and costs—Execution against defendant's property—Reduction by payment, labor, or confinement.
 - 10.82.040 Commitment for failure to pay fine and costs—Reduction of amount by performance of labor.
 - 10.82.070 Disposition of monetary payments.
 - 10.82.080 Unlawful receipt of public assistance—Deduction from subsequent assistance payments—Restitution payments.
 - 10.82.090 Interest on judgments—Disposition of nonrestitution interest.
- City, county jail prisoners may be compelled to work: RCW 9.92.130, 9.92.140, 36.28.100.*

Defendant liable for costs: RCW 10.64.015.

Fine and costs—Collection procedure, liability for, commitment for failure to pay, execution: RCW 10.01.160 through 10.01.180.

Jury fee disposition: RCW 10.46.190.

Payment of fine and costs in installments: RCW 9.92.070, 10.01.170.

10.82.010 Execution for fines and costs. Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions. [Code 1881 § 1120; 1873 p 242 § 278; 1854 p 123 § 142; RRS § 2201.]

Judgments a lien on realty: RCW 10.64.080.

10.82.020 Stay of execution for sixty days on recognizance. Every defendant against whom a judgment has been rendered for fine and costs, may stay the execution for the fine assessed and costs for sixty days from the rendition of the judgment, by procuring one or more sufficient sureties, to enter into a recognizance in open court, acknowledging themselves to be bail for such fine and costs. [Code 1881 § 1123; 1873 p 242 § 281; 1854 p 124 § 145; RRS § 2204. FORMER PART OF SECTION: Code 1881 § 1124; 1873 p 243 § 282; 1854 p 124 § 146; RRS § 2205, now codified as RCW 10.82.025.]

10.82.025 Effect of recognizance—Execution of judgment after sixty days. Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment, and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in *this act, in committal for default to pay or secure the fine and costs. [Code 1881 § 1124; 1873 p 243 § 282; 1854 p 124 § 146; RRS § 2205. Formerly RCW 10.82.020, part.]

***Reviser's note:** The term "this act" apparently refers to "An act to regulate the practice and pleadings in prosecutions for crimes" first enacted by Laws of 1854, page 100.

10.82.030 Commitment for failure to pay fine and costs—Execution against defendant's property—Reduction by payment, labor, or confinement. If any person ordered into custody until the fine and costs adjudged against him be paid shall not, within five days, pay, or cause the payment of the same to be made, the clerk of the court shall issue a warrant to the sheriff commanding him to imprison such defendant in the county jail until the amount of such fine and costs owing are paid. Execution may at any time issue against the property of the defendant for that portion of such fine and costs not reduced by the application of this section. The amount of such fine and costs owing shall be the whole of such fine and costs reduced by the amount of any portion thereof paid, and an amount established by the county legislative authority for every day the defendant performs labor as provided in RCW 10.82.040, and a lesser amount established by the county legislative authority for every day the defendant does not perform such labor while imprisoned. [1991 c 183 § 1; 1983 c 276 § 2; 1967 c 200 § 4; 1891 c 28 § 84; 1883 p 38 § 1, part; Code 1881 § 1125; 1873 p 243 § 283; 1854 p 124 § 147; RRS § 2206. Formerly RCW 10.82.030 and 10.82.050.]

Severability—1967 c 200: See note following RCW 9.45.122.

Commitment until fines and costs are paid: RCW 10.70.010.

Fine and costs, liability of defendant, collection procedure, contempt, commitment, execution. RCW 10.01.160 through 10.01.180.

10.82.040 Commitment for failure to pay fine and costs—Reduction of amount by performance of labor. When a defendant is committed to jail, on failure to pay any fines and costs, he shall, under the supervision of the county sheriff and subject to the terms of any ordinances adopted by the county commissioners, be permitted to perform labor to reduce the amount owing of the fine and costs. [1967 c 200 § 5; 1883 p 38 § 1, part; Code 1881 § 1129; 1877 p 206 § 8; 1873 p 243 § 287; 1854 p 124 § 151; RRS § 2209, part.]

Severability—1967 c 200: See note following RCW 9.45.122.

10.82.070 Disposition of monetary payments. (1) All sums of money derived from costs, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days after the collection,

to the county treasurer of the county in which the same have accrued.

(2) The county treasurer shall remit monthly thirty-two percent of the money received under this section except for certain costs to the state treasurer for deposit as provided under RCW 43.08.250 and shall deposit the remainder as provided by law. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Costs or assessments awarded to dedicated accounts, state or local, are not subject to this state allocation or to RCW 7.68.035.

(3) All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed. [1995 c 292 § 3; 1988 c 169 § 5; 1987 c 202 § 169; 1985 c 389 § 7; 1984 c 258 § 313; 1969 ex.s. c 199 § 11; 1967 c 122 § 1; 1965 c 158 § 16; 1919 c 30 § 1; 1909 p 323 § 9; 1897 c 118 § 113; 1895 c 68 § 1; 1890 p 383 § 89; 1886 p 20 § 58; Code 1881 § 3211; 1873 p 421 § 3; RRS § 4940. Formerly codified as RCW 9.01.140.]

Intent—1987 c 202: See note following RCW 2.04.190.

Effective date—1985 c 389: See note following RCW 27.24.070.

Court Improvement Act of 1984—Effective dates—Severability—

Short title—1984 c 258: See notes following RCW 3.30.010.

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

10.82.080 Unlawful receipt of public assistance—Deduction from subsequent assistance payments—Restitution payments. (1) When a superior court has, as a condition of the sentence for a person convicted of the unlawful receipt of public assistance, ordered restitution to the state of that overpayment or a portion thereof:

(a) The department of social and health services shall deduct the overpayment from subsequent assistance payments as provided in RCW 43.20B.630, when the person is receiving public assistance; or

(b) Ordered restitution payments may be made at the direction of the court to the clerk of the appropriate county or directly to the department of social and health services when the person is not receiving public assistance.

(2) However, if payments are received by the county clerk, each payment shall be transmitted to the department of social and health services within forty-five days after receipt by the county. [1987 c 75 § 2; 1985 c 245 § 2; 1982 c 201 § 1.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

10.82.090 Interest on judgments—Disposition of nonrestitution interest. Financial obligations imposed in a

judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. All nonrestitution interest retained by the court shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts. [1995 c 291 § 7; 1989 c 276 § 3.]

Severability—1989 c 276: See note following RCW 9.95.062.

Chapter 10.85

REWARDS

Sections

- 10.85.030 Rewards by counties, cities, towns, port commissions authorized.
- 10.85.040 Conflicting claims.
- 10.85.050 Payment of rewards.
- 10.85.900 Severability—1979 ex.s. c 53.

Offer of rewards by governor: RCW 43.06.010(8).

10.85.030 Rewards by counties, cities, towns, port commissions authorized. The legislative authority of any county in the state, a port commission, or the governing body of a city or town, when in its opinion the public good requires it, is hereby authorized to offer and pay a suitable reward to any person or persons for information leading to:

(a) The arrest of a specified person or persons convicted of or charged with any criminal offense; or

(b) The arrest and conviction of a person or persons committing a specified criminal offense.

In the event of crimes against county, port district, city, or town property, including but not limited to road signs, vehicles, buildings, or any other type of county, port district, city, or town property, the legislative authority of any county, a port commission, or the governing body of a city or town may offer and pay a suitable reward to any person or persons who shall furnish information leading to the arrest and conviction of any person of any offense against this county, port district, city, or town property, including but not limited to those offenses set forth in RCW 9A.48.070 through 9A.48.090, whether or not the offense is a felony, gross misdemeanor, or misdemeanor. [1986 c 185 § 1; 1981 c 211 § 1; 1979 ex.s. c 53 § 1; 1975-'76 2nd ex.s. c 25 § 1; 1886 p 124 § 1; RRS § 2249.]

10.85.040 Conflicting claims. When more than one claimant applies for the payment of any reward, offered by any county legislative authority, board of commissioners of a port district, or city or town governing body, the county legislative authority, board of commissioners of a port district, or city or town governing body shall determine to whom the same shall be paid, and if to more than one person, in what proportion to each; and their determination shall be final and conclusive. [1986 c 185 § 2; 1979 ex.s. c 53 § 2; 1886 p 124 § 3; RRS § 2251.]

10.85.050 Payment of rewards. Whenever any reward has been offered by any county legislative authority, board of commissioners of a port district, or city or town governing body in the state under RCW 10.85.030, the person or persons providing the information shall be entitled to the reward, and the county legislative authority, board of commissioners of a port district, or city or town governing body which has offered the reward is authorized to draw a warrant or warrants out of any money in the county, port district, or city or town treasury, as appropriate, not otherwise appropriated. [1986 c 185 § 3; 1979 ex.s. c 53 § 3; 1886 p 124 § 2; RRS § 2250.]

10.85.900 Severability—1979 ex.s. c 53. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 53 § 6.]

Chapter 10.88

UNIFORM CRIMINAL EXTRADITION ACT

Sections

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Fugitives of this state: Chapter 10.34 RCW.

Interstate compact on juveniles: Chapter 13.24 RCW.

Return of parole violators from outside the state: RCW 9.95.280 through 9.95.300.

10.88.200 Definitions. Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the law of this

state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state, and the term "state" referring to a state other than this state refers to any other state, or the District of Columbia, or territory organized or unorganized of the United States of America. [1971 ex.s. c 46 § 1.]

Reviser's note: Throughout this chapter, the phrase "this act" has been changed to "this chapter." This act [1971 ex.s. c 46] consists of this chapter, the 1971 amendment of RCW 26.21.050, and the repeal of RCW 10.88.010 through 10.88.060.

10.88.210 Authority of governor. Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, the governor of this state may in his discretion have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state. [1971 ex.s. c 46 § 2.]

10.88.220 Demand for extradition—Requirements. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under RCW 10.88.250, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be certified or authenticated by the executive authority making the demand. [1971 ex.s. c 46 § 3.]

10.88.230 Investigation of demand—Report. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. [1971 ex.s. c 46 § 4.]

10.88.240 Return or surrender of person charged in another state. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such

other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in RCW 10.88.410 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. [1971 ex.s. c 46 § 5.]

10.88.250 Surrender of person charged with crime committed in state other than demanding state. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in RCW 10.88.220 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. [1971 ex.s. c 46 § 6.]

10.88.260 Warrant of arrest. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. [1971 ex.s. c 46 § 7.]

10.88.270 Authority of officer or other person under warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter to the duly authorized agent of the demanding state. [1971 ex.s. c 46 § 8.]

10.88.280 Authority to command assistance. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. [1971 ex.s. c 46 § 9.]

10.88.290 Rights of person arrested. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to

test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state: PROVIDED, That the hearing provided for in this section shall not be available except as may be constitutionally required if a hearing on the legality of arrest has been held pursuant to RCW 10.88.320 or 10.88.330. [1971 ex.s. c 46 § 10.]

10.88.300 Delivery of person in violation of RCW 10.88.290—Penalty. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to RCW 10.88.290, shall be guilty of a gross misdemeanor and, on conviction, shall be imprisoned in the county jail for not more than one year, or be fined not more than one thousand dollars, or both. [1971 ex.s. c 46 § 11.]

10.88.310 Confinement of prisoner. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: PROVIDED, HOWEVER, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. [1971 ex.s. c 46 § 12.]

10.88.320 Charge or complaint—Warrant of arrest. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under RCW 10.88.250, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting

forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under RCW 10.88.250, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. [1971 ex.s. c 46 § 13.]

10.88.330 Arrest without warrant. (1) The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in RCW 10.88.320; and thereafter his answer shall be heard as if he had been arrested on a warrant.

(2) An officer of the United States customs service or the immigration and naturalization service may, without a warrant, arrest a person if:

(a) The officer is on duty;

(b) One or more of the following situations exists:

(i) The person commits an assault or other crime involving physical harm, defined and punishable under chapter 9A.36 RCW, against the officer or against any other person in the presence of the officer;

(ii) The person commits an assault or related crime while armed, defined and punishable under chapter 9.41 RCW, against the officer or against any other person in the presence of the officer;

(iii) The officer has reasonable cause to believe that a crime as defined in (b)(i) or (ii) of this subsection has been committed and reasonable cause to believe that the person to be arrested has committed it;

(iv) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it; or

(v) The officer has received positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a peace officer holds a warrant for the person's arrest; and

(c) The regional commissioner of customs certifies to the state of Washington that the customs officer has received proper training within the agency to enable that officer to enforce or administer this subsection. [1979 ex.s. c 244 § 16; 1971 ex.s. c 46 § 14.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

10.88.340 Preliminary examination—Commitment.

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under RCW 10.88.250, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in RCW 10.88.350, or until he shall be legally discharged. [1971 ex.s. c 46 § 15.]

10.88.350 Bail. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such a bond, and for his surrender, to be arrested upon the warrant of the governor of this state. [1971 ex.s. c 46 § 16.]

10.88.360 Failure to make timely arrest or demand for extradition. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in RCW 10.88.350, but within a period not to exceed sixty days after the date of such new bond: PROVIDED, That the governor may, except in cases in which the offense is punishable under laws of the demanding state by death or life imprisonment, deny a demand for extradition when such demand is not received by the governor before the expiration of one hundred twenty days from the date of arrest in this state of the alleged fugitive, in the absence of a showing of good cause for such delay. [1971 ex.s. c 46 § 17.]

10.88.370 Failure to appear—Bond forfeiture—Arrest—Recovery on bond. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state. [1971 ex.s. c 46 § 18.]

10.88.380 Pending criminal prosecution in this state. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state. [1971 ex.s. c 46 § 19.]

10.88.390 Recall or reissuance of warrant. The governor may recall his warrant of arrest or may issue

another warrant whenever he deems proper. [1971 ex.s. c 46 § 20.]

10.88.400 Demand by governor of this state for extradition—Warrant—Agent. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the appropriate authority of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed. [1971 ex.s. c 46 § 21.]

10.88.410 Application for requisition for return of person—Contents—Affidavits—Copies. (1) When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. [1971 ex.s. c 46 § 22.]

10.88.420 Civil process—Service on extradited person. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been finally convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited. [1971 ex.s. c 46 § 23.]

10.88.430 Waiver of extradition. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in RCW 10.88.260 and 10.88.270 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state: PROVIDED, HOWEVER, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in RCW 10.88.290.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: PROVIDED, HOWEVER, That nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state. [1971 ex.s. c 46 § 24.]

10.88.440 Rights, powers, privileges or jurisdiction of state not waived. Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. [1971 ex.s. c 46 § 25.]

10.88.450 Trial for other crimes. After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. [1971 ex.s. c 46 § 26.]

10.88.460 Extradition or surrender of obligor—Uniform interstate family support act. See chapter 26.21 RCW.

10.88.900 Construction—1971 ex.s. c 46. The provisions of this chapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it, to the extent which it has been enacted by this state. [1971 ex.s. c 46 § 27.]

10.88.910 Short title. RCW 10.88.200 through 10.88.450 shall be known and may be cited as the Uniform Criminal Extradition Act. [1971 ex.s. c 46 § 28.]

10.88.920 Effective date—1971 ex.s. c 46. This act shall become effective on July 1, 1971. [1971 ex.s. c 46 § 29.]

10.88.930 Severability—1971 ex.s. c 46. If any provisions of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1971 ex.s. c 46 § 32.]

Chapter 10.89

UNIFORM ACT ON FRESH PURSUIT

Sections

10.89.010	Authority of foreign peace officer.
10.89.020	Preliminary examination by magistrate.
10.89.030	Construction as to lawfulness of arrest.
10.89.040	"State" includes District of Columbia.
10.89.050	"Fresh pursuit" defined.
10.89.060	Duty to send copies to other states.
10.89.070	Severability—1943 c 261.
10.89.080	Short title.

10.89.010 Authority of foreign peace officer. Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest the person on the ground that he or she is believed to have committed a felony in such other state or a violation of the laws of such other state relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he or she is believed to have committed a felony or a violation of the laws of such other state relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving in this state. [1998 c 205 § 1; 1943 c 261 § 1; Rem. Supp. 1943 § 2252-1. Formerly RCW 10.88.070.]

10.89.020 Preliminary examination by magistrate. If an arrest is made in this state by an officer of another

state in accordance with the provisions of RCW 10.89.010, he shall, without unnecessary delay, take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state. If the magistrate determines that the arrest was unlawful, he shall discharge the person arrested. [1943 c 261 § 2; Rem. Supp. 1943 § 2252-2. Formerly RCW 10.88.080.]

10.89.030 Construction as to lawfulness of arrest. RCW 10.89.010 shall not be construed so as to make unlawful any arrest in this state which otherwise would be lawful. [1943 c 261 § 3; Rem. Supp. 1943 § 2252-3. Formerly RCW 10.88.100.]

10.89.040 "State" includes District of Columbia. For the purpose of this chapter the word "state" shall include the District of Columbia. [1943 c 261 § 4; Rem. Supp. 1943 § 2252-4. Formerly RCW 10.88.110.]

10.89.050 "Fresh pursuit" defined. The term "fresh pursuit" as used in this chapter, shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony or a violation of such other state relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving. It shall also include the pursuit of a person suspected of having committed a supposed felony, or a supposed violation of the laws relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving, though no felony or violation of the laws relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving actually has been committed, if there is reasonable ground for believing that a felony or a violation of the laws relating to driving while intoxicated, driving under the influence of drugs or alcohol, driving while impaired, or reckless driving has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay. [1998 c 205 § 2; 1943 c 261 § 5; Rem. Supp. 1943 § 2252-5. Formerly RCW 10.88.090.]

10.89.060 Duty to send copies to other states. Upon the passage and approval by the governor of this chapter, it shall be the duty of the secretary of state, or other officer, to certify a copy of this chapter to the executive department of each of the states of the United States. [1943 c 261 § 6; Rem. Supp. 1943 § 2252-6.]

10.89.070 Severability—1943 c 261. If any part of this chapter is for any reason declared void, it is declared to be the intent of this chapter that such invalidity shall not affect the validity of the remaining portions of this chapter. [1943 c 261 § 7; Rem. Supp. 1943 § 2252-7.]

10.89.080 Short title. This chapter may be cited as the "Uniform Act on Fresh Pursuit." [1943 c 261 § 8; Rem. Supp. 1943 § 2252-8.]

Chapter 10.91

UNIFORM RENDITION OF ACCUSED PERSONS ACT

Sections

10.91.010	Arrest and return of released person charged in another state—Violation of release conditions—Request—Documents—Warrant—Investigation.
10.91.020	Preliminary hearing—Waiver—Conditions of release.
10.91.030	Preliminary hearing—Investigation report—Findings—Order authorizing return.
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10.91.050	Costs.
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10.91.910	Construction—1971 ex.s. c 17.
10.91.920	Short title.

10.91.010 Arrest and return of released person charged in another state—Violation of release conditions—Request—Documents—Warrant—Investigation.

(1) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his release, and is present in this state, a designated agent of the court, judge, or magistrate which authorized the release may request the issuance of a warrant for the arrest of the person and an order authorizing his return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent must file with a judicial officer of this state the following documents:

(a) an affidavit stating the name and whereabouts of the person whose removal is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him;

(b) a certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and

(c) a certified copy of an order of the demanding court, judge, or magistrate stating the manner in which the terms and the conditions of the release have been violated and designating the affiant its agent for seeking removal of the person.

(2) Upon initially determining that the affiant is a designated agent of the demanding court, judge, or magistrate, and that there is a probable cause for believing that the person whose removal is sought has violated the terms or conditions of his release, the judicial officer shall issue a warrant to a law enforcement officer of this state for the person's arrest.

(3) The judicial officer shall notify the prosecuting attorney of his action and shall direct him to investigate the case to ascertain the validity of the affidavits and documents required by subsection (1) and the identity and authority of the affiant. [1971 ex.s. c 17 § 2.]

10.91.020 Preliminary hearing—Waiver—Conditions of release. (1) The person whose removal is

sought shall be brought before the judicial officer without unnecessary delay upon arrest pursuant to the warrant; whereupon the judicial officer shall set a time and place for hearing, and shall advise the person of his right to have the assistance of counsel, to confront the witnesses against him, and to produce evidence in his own behalf at the hearing.

(2) The person whose removal is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the judicial officer shall issue an order pursuant to RCW 10.91.030.

(3) The judicial officer may impose conditions of release authorized by the laws of this state which will reasonably assure the appearance at the hearing of the person whose removal is sought. [1971 ex.s. c 17 § 3.]

10.91.030 Preliminary hearing—Investigation report—Findings—Order authorizing return. The prosecuting attorney shall appear at the hearing and report to the judicial officer the results of his investigation. If the judicial officer finds that the affiant is a designated agent of the demanding court, judge, or magistrate and that the person whose removal is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his release, the judicial officer shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith. [1971 ex.s. c 17 § 4.]

10.91.040 "Judicial officer of this state," "judicial officer" defined. For the purpose of this chapter "judicial officer of this state" and "judicial officer" mean a judge of the superior or district court. [1987 c 202 § 170; 1971 ex.s. c 17 § 5.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.91.050 Costs. The costs of the procedures required by this chapter shall be borne by the demanding state, except when the designated agent is not a public official. In any case when the designated agent is not a public official, he shall bear the cost of such procedures. [1971 ex.s. c 17 § 9.]

10.91.900 Severability—1971 ex.s. c 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 17 § 6.]

10.91.910 Construction—1971 ex.s. c 17. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1971 ex.s. c 17 § 7.]

10.91.920 Short title. This chapter may be cited as the "Uniform Rendition of Accused Persons Act." [1971 ex.s. c 17 § 8.]

Chapter 10.93

WASHINGTON MUTUAL AID PEACE OFFICERS POWERS ACT

Sections

10.93.001	Short title—Legislative intent—Construction.
10.93.020	Definitions.
10.93.030	Reporting use of authority under this chapter.
10.93.040	Liability for exercise of authority.
10.93.050	Supervisory control over peace officers.
10.93.060	Privileges and immunities applicable.
10.93.070	General authority peace officer—Powers of, circumstances.
10.93.080	Limited authority peace officer—No additional powers.
10.93.090	Specially commissioned peace officer—Powers of, circumstances.
10.93.100	Federal peace officers—No additional powers.
10.93.110	Attorney general—No additional powers.
10.93.120	Fresh pursuit, arrest.
10.93.130	Contracting authority of law enforcement agencies.
10.93.140	State patrol exempted.
10.93.900	Effective date—1985 c 89.

10.93.001 Short title—Legislative intent—Construction. (1) This chapter may be known and cited as the Washington mutual aid peace officer powers act of 1985.

(2) It is the intent of the legislature that current artificial barriers to mutual aid and cooperative enforcement of the laws among general authority local, state, and federal agencies be modified pursuant to this chapter.

(3) This chapter shall be liberally construed to effectuate the intent of the legislature to modify current restrictions upon the limited territorial and enforcement authority of general authority peace officers and to effectuate mutual aid among agencies.

(4) The modification of territorial and enforcement authority of the various categories of peace officers covered by this chapter shall not create a duty to act in extraterritorial situations beyond any duty which may otherwise be imposed by law or which may be imposed by the primary commissioning agency. [1985 c 89 § 1.]

10.93.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "General authority Washington law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol is a general authority Washington law enforcement agency.

(2) "Limited authority Washington law enforcement agency" means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state

departments of natural resources, fish and wildlife, and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

(3) "General authority Washington peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(4) "Limited authority Washington peace officer" means any full-time, fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible. A limited authority Washington peace officer may be a specially commissioned Washington peace officer if otherwise qualified for such status under this chapter.

(5) "Specially commissioned Washington peace officer", for the purposes of this chapter, means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under this chapter as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specially commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon or Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho. A reserve peace officer is an individual who is an officer of a Washington law enforcement agency who does not serve such agency on a full-time basis but who, when called by the agency into active service, is fully commissioned on the same basis as full-time peace officers to enforce the criminal laws of the state.

(6) "Federal peace officer" means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(7) "Agency with primary territorial jurisdiction" means a city or town police agency which has responsibility for police activity within its boundaries; or a county police or sheriff's department which has responsibility with regard to police activity in the unincorporated areas within the county boundaries; or a statutorily authorized port district police agency or four-year state college or university police agency which has responsibility for police activity within the statutorily authorized enforcement boundaries of the port district, state college, or university.

(8) "Primary commissioning agency" means (a) the employing agency in the case of a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer, and (b) the commissioning agency in the case of a specially commissioned Washington peace officer (i) who is performing functions within the course and scope of the special commission and (ii) who is not also a general authority Washington peace officer, a limited authority

Washington peace officer, an Indian tribal peace officer, or a federal peace officer.

(9) "Primary function of an agency" means that function to which greater than fifty percent of the agency's resources are allocated.

(10) "Mutual law enforcement assistance" includes, but is not limited to, one or more law enforcement agencies aiding or assisting one or more other such agencies through loans or exchanges of personnel or of material resources, for law enforcement purposes. [1994 c 264 § 3; 1988 c 36 § 5; 1985 c 89 § 2.]

10.93.030 Reporting use of authority under this chapter. The circumstances surrounding any actual exercise of peace officer authority under this chapter shall be timely reported, after the fact, to the Washington law enforcement agency with primary territorial jurisdiction and shall be subject to any reasonable reporting procedure which may be established by such agency. [1985 c 89 § 3.]

10.93.040 Liability for exercise of authority. Any liability or claim of liability which arises out of the exercise or alleged exercise of authority by an officer acting within the course and scope of the officer's duties as a peace officer under this chapter is the responsibility of the primary commissioning agency unless the officer acts under the direction and control of another agency or unless the liability is otherwise allocated under a written agreement between the primary commissioning agency and another agency. [1985 c 89 § 4.]

10.93.050 Supervisory control over peace officers. All persons exercising peace officer powers under this chapter are subject to supervisory control of and limitations imposed by the primary commissioning agency, but the primary commissioning agency may, by agreement with another agency, temporarily delegate supervision over the peace officer to another agency. [1985 c 89 § 5.]

10.93.060 Privileges and immunities applicable. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, all pension, relief, disability, worker's compensation insurance, and other benefits which apply to the activity of officers, agents, or employees of any law enforcement agency when performing their respective functions within the territorial limits of their respective agencies shall apply to them and to their primary commissioning agencies to the same degree and extent while such persons are engaged in the performance of authorized functions and duties under this chapter. [1985 c 89 § 6.]

10.93.070 General authority peace officer—Powers of, circumstances. In addition to any other powers vested by law, a general authority Washington peace officer who possesses a certificate of basic law enforcement training or a certificate of equivalency or has been exempted from the requirement therefor by the Washington state criminal justice training commission may enforce the traffic or criminal laws of this state throughout the territorial bounds of this state, under the following enumerated circumstances:

(1) Upon the prior written consent of the sheriff or chief of police in whose primary territorial jurisdiction the exercise of the powers occurs;

(2) In response to an emergency involving an immediate threat to human life or property;

(3) In response to a request for assistance pursuant to a mutual law enforcement assistance agreement with the agency of primary territorial jurisdiction or in response to the request of a peace officer with enforcement authority;

(4) When the officer is transporting a prisoner;

(5) When the officer is executing an arrest warrant or search warrant; or

(6) When the officer is in fresh pursuit, as defined in RCW 10.93.120. [1985 c 89 § 7.]

10.93.080 Limited authority peace officer—No additional powers. A limited authority Washington peace officer shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 8.]

10.93.090 Specially commissioned peace officer—Powers of, circumstances. A specially commissioned Washington peace officer who has successfully completed a course of basic training prescribed or approved for such officers by the Washington state criminal justice training commission may exercise any authority which the special commission vests in the officer, throughout the territorial bounds of the state, outside of the officer's primary territorial jurisdiction under the following circumstances:

(1) The officer is in fresh pursuit, as defined in RCW 10.93.120; or

(2) The officer is acting pursuant to mutual law enforcement assistance agreement between the primary commissioning agency and the agency with primary territorial jurisdiction. [1985 c 89 § 9.]

10.93.100 Federal peace officers—No additional powers. Federal peace officers shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 10.]

10.93.110 Attorney general—No additional powers. The attorney general shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 11.]

10.93.120 Fresh pursuit, arrest. (1) Any peace officer who has authority under Washington law to make an arrest may proceed in fresh pursuit of a person (a) who is reasonably believed to have committed a violation of traffic or criminal laws, or (b) for whom such officer holds a warrant of arrest, and such peace officer shall have the authority to arrest and to hold such person in custody anywhere in the state.

(2) The term "fresh pursuit," as used in this chapter, includes, without limitation, fresh pursuit as defined by the common law. Fresh pursuit does not necessarily imply

immediate pursuit, but pursuit without unreasonable delay. [1985 c 89 § 12.]

10.93.130 Contracting authority of law enforcement agencies. Under the interlocal cooperation act, chapter 39.34 RCW, any law enforcement agency referred to by this chapter may contract with any other such agency and may also contract with any law enforcement agency of another state, or such state's political subdivision, to provide mutual law enforcement assistance. The agency with primary territorial jurisdiction may require that officers from participating agencies meet reasonable training or certification standards or other reasonable standards. [1985 c 89 § 13.]

10.93.140 State patrol exempted. This chapter does not limit the scope of jurisdiction and authority of the Washington state patrol as otherwise provided by law, and the Washington state patrol shall not be bound by the reporting requirements of RCW 10.93.030. [1985 c 89 § 14.]

10.93.900 Effective date—1985 c 89. This act shall take effect July 1, 1985. [1985 c 89 § 17.]

Chapter 10.95

CAPITAL PUNISHMENT—AGGRAVATED FIRST DEGREE MURDER

Sections

10.95.010	Court rules.
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10.95.030	Sentences for aggravated first degree murder.
10.95.040	Special sentencing proceeding—Notice—Filing—Service.
10.95.050	Special sentencing proceeding—When held—Jury to decide matters presented—Waiver—Reconvening same jury—Impanelling new jury—Peremptory challenges.
10.95.060	Special sentencing proceeding—Jury instructions—Opening statements—Evidence—Arguments—Question for jury.
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10.95.900	Severability—1981 c 138.

Homicide: Chapter 9A.32 RCW.

10.95.010 Court rules. No rule promulgated by the supreme court of Washington pursuant to RCW 2.04.190 and 2.04.200, now or in the future, shall be construed to supersede or alter any of the provisions of this chapter. [1981 c 138 § 1.]

10.95.020 Definition. A person is guilty of aggravated first degree murder if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

(10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

(c) Burglary in the first or second degree or residential burglary;

(d) Kidnapping in the first degree; or

(e) Arson in the first degree;

(12) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim;

(13) At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;

(14) At the time the person committed the murder, the person and the victim were "family or household members" as that term is defined in RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:

(a) Harassment as defined in RCW 9A.46.020; or

(b) Any criminal assault. [1998 c 305 § 1. Prior: 1995 c 129 § 17 (Initiative Measure No. 159); 1994 c 121 § 3; 1981 c 138 § 2.]

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.310.

10.95.030 Sentences for aggravated first degree murder.

(1) Except as provided in subsection (2) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the indeterminate sentence review board or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

(2) If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. In no case, however, shall a person be sentenced to death if the person was mentally retarded at the time the crime was committed, under the definition of mental retardation set forth in (a) of this subsection. A diagnosis of mental retardation shall be documented by a licensed psychiatrist or licensed psychologist designated by the court, who is an expert in the diagnosis and evaluation of mental retardation. The defense must establish mental retardation by a preponderance of the evidence and the court must make a finding as to the existence of mental retardation.

(a) "Mentally retarded" means the individual has: (i) Significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior; and (iii) both significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period.

(b) "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

(c) "Significantly subaverage general intellectual functioning" means intelligence quotient seventy or below.

(d) "Adaptive behavior" means the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age.

(e) "Developmental period" means the period of time between conception and the eighteenth birthday. [1993 c 479 § 1; 1981 c 138 § 3.]

10.95.040 Special sentencing proceeding—Notice—Filing—Service. (1) If a person is charged with aggravated first degree murder as defined by RCW 10.95.020, the prosecuting attorney shall file written notice of a special sentencing proceeding to determine whether or not the death penalty should be imposed when there is reason to believe that there are not sufficient mitigating circumstances to merit leniency.

(2) The notice of special sentencing proceeding shall be filed and served on the defendant or the defendant's attorney within thirty days after the defendant's arraignment upon the charge of aggravated first degree murder unless the court, for good cause shown, extends or reopens the period for filing and service of the notice. Except with the consent of the prosecuting attorney, during the period in which the prosecuting attorney may file the notice of special sentencing proceeding, the defendant may not tender a plea of guilty to the charge of aggravated first degree murder nor may the court accept a plea of guilty to the charge of aggravated first degree murder or any lesser included offense.

(3) If a notice of special sentencing proceeding is not filed and served as provided in this section, the prosecuting attorney may not request the death penalty. [1981 c 138 § 4.]

10.95.050 Special sentencing proceeding—When held—Jury to decide matters presented—Waiver—Reconvening same jury—Impanelling new jury—Peremptory challenges. (1) If a defendant is adjudicated guilty of aggravated first degree murder, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, a special sentencing proceeding shall be held if a notice of special sentencing proceeding was filed and served as provided by RCW 10.95.040. No sort of plea, admission, or agreement may abrogate the requirement that a special sentencing proceeding be held.

(2) A jury shall decide the matters presented in the special sentencing proceeding unless a jury is waived in the discretion of the court and with the consent of the defendant and the prosecuting attorney.

(3) If the defendant's guilt was determined by a jury verdict, the trial court shall reconvene the same jury to hear the special sentencing proceeding. The proceeding shall commence as soon as practicable after completion of the trial at which the defendant's guilt was determined. If, however, unforeseen circumstances make it impracticable to reconvene the same jury to hear the special sentencing proceeding, the

trial court may dismiss that jury and convene a jury pursuant to subsection (4) of this section.

(4) If the defendant's guilt was determined by plea of guilty or by decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including but not limited to a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve persons plus whatever alternate jurors the trial court deems necessary. The defense and prosecution shall each be allowed to peremptorily challenge twelve jurors. If there is more than one defendant, each defendant shall be allowed an additional peremptory challenge and the prosecution shall be allowed a like number of additional challenges. If alternate jurors are selected, the defense and prosecution shall each be allowed one peremptory challenge for each alternate juror to be selected and if there is more than one defendant each defendant shall be allowed an additional peremptory challenge for each alternate juror to be selected and the prosecution shall be allowed a like number of additional challenges. [1981 c 138 § 5.]

10.95.060 Special sentencing proceeding—Jury instructions—Opening statements—Evidence—Arguments—Question for jury. (1) At the commencement of the special sentencing proceeding, the trial court shall instruct the jury as to the nature and purpose of the proceeding and as to the consequences of its decision, as provided in RCW 10.95.030.

(2) At the special sentencing proceeding both the prosecution and defense shall be allowed to make an opening statement. The prosecution shall first present evidence and then the defense may present evidence. Rebuttal evidence may be presented by each side. Upon conclusion of the evidence, the court shall instruct the jury and then the prosecution and defense shall be permitted to present argument. The prosecution shall open and conclude the argument.

(3) The court shall admit any relevant evidence which it deems to have probative value regardless of its admissibility under the rules of evidence, including hearsay evidence and evidence of the defendant's previous criminal activity regardless of whether the defendant has been charged or convicted as a result of such activity. The defendant shall be accorded a fair opportunity to rebut or offer any hearsay evidence.

In addition to evidence of whether or not there are sufficient mitigating circumstances to merit leniency, if the jury sitting in the special sentencing proceeding has not heard evidence of the aggravated first degree murder of which the defendant stands convicted, both the defense and prosecution may introduce evidence concerning the facts and circumstances of the murder.

(4) Upon conclusion of the evidence and argument at the special sentencing proceeding, the jury shall retire to deliberate upon the following question: "Having in mind the crime of which the defendant has been found guilty, are you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?"

In order to return an affirmative answer to the question posed by this subsection, the jury must so find unanimously. [1981 c 138 § 6.]

10.95.070 Special sentencing proceeding—Factors which jury may consider in deciding whether leniency merited. In deciding the question posed by RCW 10.95.060(4), the jury, or the court if a jury is waived, may consider any relevant factors, including but not limited to the following:

(1) Whether the defendant has or does not have a significant history, either as a juvenile or an adult, of prior criminal activity;

(2) Whether the murder was committed while the defendant was under the influence of extreme mental disturbance;

(3) Whether the victim consented to the act of murder;

(4) Whether the defendant was an accomplice to a murder committed by another person where the defendant's participation in the murder was relatively minor;

(5) Whether the defendant acted under duress or domination of another person;

(6) Whether, at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental disease or defect. However, a person found to be mentally retarded under RCW 10.95.030(2) may in no case be sentenced to death;

(7) Whether the age of the defendant at the time of the crime calls for leniency; and

(8) Whether there is a likelihood that the defendant will pose a danger to others in the future. [1993 c 479 § 2; 1981 c 138 § 7.]

10.95.080 When sentence to death or sentence to life imprisonment shall be imposed. (1) If a jury answers affirmatively the question posed by RCW 10.95.060(4), or when a jury is waived as allowed by RCW 10.95.050(2) and the trial court answers affirmatively the question posed by RCW 10.95.060(4), the defendant shall be sentenced to death. The trial court may not suspend or defer the execution or imposition of the sentence.

(2) If the jury does not return an affirmative answer to the question posed in RCW 10.95.060(4), the defendant shall be sentenced to life imprisonment as provided in RCW 10.95.030(1). [1981 c 138 § 8.]

10.95.090 Sentence if death sentence commuted, held invalid, or if death sentence established by chapter held invalid. If any sentence of death imposed pursuant to this chapter is commuted by the governor, or held to be invalid by a final judgment of a court after all avenues of appeal have been exhausted by the parties to the action, or if the death penalty established by this chapter is held to be invalid by a final judgment of a court which is binding on all courts in the state, the sentence for aggravated first degree murder if there was an affirmative response to the question posed by RCW 10.95.060(4) shall be life imprisonment as provided in RCW 10.95.030(1). [1981 c 138 § 9.]

10.95.100 Mandatory review of death sentence by supreme court—Notice—Transmittal—Contents of notice—Jurisdiction. Whenever a defendant is sentenced to death, upon entry of the judgment and sentence in the trial court the sentence shall be reviewed on the record by the supreme court of Washington.

Within ten days of the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall transmit notice thereof to the clerk of the supreme court of Washington and to the parties. The notice shall include the caption of the case, its cause number, the defendant's name, the crime or crimes of which the defendant was convicted, the sentence imposed, the date of entry of judgment and sentence, and the names and addresses of the attorneys for the parties. The notice shall vest with the supreme court of Washington the jurisdiction to review the sentence of death as provided by this chapter. The failure of the clerk of the trial court to transmit the notice as required shall not prevent the supreme court of Washington from conducting the sentence review as provided by this act. [1981 c 138 § 10.]

***Reviser's note:** This act [1981 c 138] consists of chapter 10.95 RCW, an amendment to RCW 9A.32.040, and the repeal of RCW 9A.32.045 through 9A.32.047, 10.49.010, 10.70.040 through 10.70.130, and 10.94.010 through 10.94.900.

10.95.110 Verbatim report of trial proceedings—Preparation—Transmittal to supreme court—Clerk's papers—Receipt. (1) Within ten days after the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall cause the preparation of a verbatim report of the trial proceedings to be commenced.

(2) Within five days of the filing and approval of the verbatim report of proceedings, the clerk of the trial court shall transmit such verbatim report of proceedings together with copies of all of the clerk's papers to the clerk of the supreme court of Washington. The clerk of the supreme court of Washington shall forthwith acknowledge receipt of these documents by providing notice of receipt to the clerk of the trial court, the defendant or his or her attorney, and the prosecuting attorney. [1981 c 138 § 11.]

10.95.120 Information report—Form—Contents—Submission to supreme court, defendant, prosecuting attorney. In all cases in which a person is convicted of aggravated first degree murder, the trial court shall, within thirty days after the entry of the judgment and sentence, submit a report to the clerk of the supreme court of Washington, to the defendant or his or her attorney, and to the prosecuting attorney which provides the information specified under subsections (1) through (8) of this section. The report shall be in the form of a standard questionnaire prepared and supplied by the supreme court of Washington and shall include the following:

(1) Information about the defendant, including the following:

(a) Name, date of birth, gender, marital status, and race and/or ethnic origin;

(b) Number and ages of children;

(c) Whether his or her parents are living, and date of death where applicable;

(d) Number of children born to his or her parents;

(e) The defendant's educational background, intelligence level, and intelligence quotient;

(f) Whether a psychiatric evaluation was performed, and if so, whether it indicated that the defendant was:

(i) Able to distinguish right from wrong;

(ii) Able to perceive the nature and quality of his or her act; and

(iii) Able to cooperate intelligently with his or her defense;

(g) Any character or behavior disorders found or other pertinent psychiatric or psychological information;

(h) The work record of the defendant;

(i) A list of the defendant's prior convictions including the offense, date, and sentence imposed; and

(j) The length of time the defendant has resided in Washington and the county in which he or she was convicted.

(2) Information about the trial, including:

(a) The defendant's plea;

(b) Whether defendant was represented by counsel;

(c) Whether there was evidence introduced or instructions given as to defenses to aggravated first degree murder, including excusable homicide, justifiable homicide, insanity, duress, entrapment, alibi, intoxication, or other specific defense;

(d) Any other offenses charged against the defendant and tried at the same trial and whether they resulted in conviction;

(e) What aggravating circumstances were alleged against the defendant and which of these circumstances was found to have been applicable; and

(f) Names and charges filed against other defendant(s) if tried jointly and disposition of the charges.

(3) Information concerning the special sentencing proceeding, including:

(a) The date the defendant was convicted and date the special sentencing proceeding commenced;

(b) Whether the jury for the special sentencing proceeding was the same jury that returned the guilty verdict, providing an explanation if it was not;

(c) Whether there was evidence of mitigating circumstances;

(d) Whether there was, in the court's opinion, credible evidence of the mitigating circumstances as provided in RCW 10.95.070;

(e) The jury's answer to the question posed in RCW 10.95.060(4);

(f) The sentence imposed.

(4) Information about the victim, including:

(a) Whether he or she was related to the defendant by blood or marriage;

(b) The victim's occupation and whether he or she was an employer or employee of the defendant;

(c) Whether the victim was acquainted with the defendant, and if so, how well;

(d) The length of time the victim resided in Washington and the county;

(e) Whether the victim was the same race and/or ethnic origin as the defendant;

(f) Whether the victim was the same sex as the defendant;

(g) Whether the victim was held hostage during the crime and if so, how long;

(h) The nature and extent of any physical harm or torture inflicted upon the victim prior to death;

(i) The victim's age; and

(j) The type of weapon used in the crime, if any.

(5) Information about the representation of the defendant, including:

(a) Date counsel secured;

(b) Whether counsel was retained or appointed, including the reason for appointment;

(c) The length of time counsel has practiced law and nature of his or her practice; and

(d) Whether the same counsel served at both the trial and special sentencing proceeding, and if not, why not.

(6) General considerations, including:

(a) Whether the race and/or ethnic origin of the defendant, victim, or any witness was an apparent factor at trial;

(b) What percentage of the county population is the same race and/or ethnic origin of the defendant;

(c) Whether members of the defendant's or victim's race and/or ethnic origin were represented on the jury;

(d) Whether there was evidence that such members were systematically excluded from the jury;

(e) Whether the sexual orientation of the defendant, victim, or any witness was a factor in the trial;

(f) Whether any specific instruction was given to the jury to exclude race, ethnic origin, or sexual orientation as an issue;

(g) Whether there was extensive publicity concerning the case in the community;

(h) Whether the jury was instructed to disregard such publicity;

(i) Whether the jury was instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when considering its verdict or its findings in the special sentencing proceeding;

(j) The nature of the evidence resulting in such instruction; and

(k) General comments of the trial judge concerning the appropriateness of the sentence considering the crime, defendant, and other relevant factors.

(7) Information about the chronology of the case, including the date that:

(a) The defendant was arrested;

(b) Trial began;

(c) The verdict was returned;

(d) Post-trial motions were ruled on;

(e) Special sentencing proceeding began;

(f) Sentence was imposed;

(g) Trial judge's report was completed; and

(h) Trial judge's report was filed.

(8) The trial judge shall sign and date the questionnaire when it is completed. [1981 c 138 § 12.]

10.95.130 Questions posed for determination by supreme court in death sentence review—Review in addition to appeal—Consolidation of review and appeal.

(1) The sentence review required by RCW 10.95.100 shall be in addition to any appeal. The sentence review and an appeal shall be consolidated for consideration. The defen-

dant and the prosecuting attorney may submit briefs within the time prescribed by the court and present oral argument to the court.

(2) With regard to the sentence review required by *this act, the supreme court of Washington shall determine:

(a) Whether there was sufficient evidence to justify the affirmative finding to the question posed by RCW 10.95.060(4); and

(b) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. For the purposes of this subsection, "similar cases" means cases reported in the Washington Reports or Washington Appellate Reports since January 1, 1965, in which the judge or jury considered the imposition of capital punishment regardless of whether it was imposed or executed, and cases in which reports have been filed with the supreme court under RCW 10.95.120;

(c) Whether the sentence of death was brought about through passion or prejudice; and

(d) Whether the defendant was mentally retarded within the meaning of RCW 10.95.030(2). [1993 c 479 § 3; 1981 c 138 § 13.]

***Reviser's note:** For meaning of "this act," see note following RCW 10.95.100.

10.95.140 Invalidation of sentence, remand for resentencing—Affirmation of sentence, remand for execution. Upon completion of a sentence review:

(1) The supreme court of Washington shall invalidate the sentence of death and remand the case to the trial court for resentencing in accordance with RCW 10.95.090 if:

(a) The court makes a negative determination as to the question posed by RCW 10.95.130(2)(a); or

(b) The court makes an affirmative determination as to any of the questions posed by RCW 10.95.130(2) (b), (c), or (d).

(2) The court shall affirm the sentence of death and remand the case to the trial court for execution in accordance with RCW 10.95.160 if:

(a) The court makes an affirmative determination as to the question posed by RCW 10.95.130(2)(a); and

(b) The court makes a negative determination as to the questions posed by RCW 10.95.130(2) (b), (c), and (d). [1993 c 479 § 4; 1981 c 138 § 14.]

10.95.150 Time limit for appellate review of death sentence and filing opinion. In all cases in which a sentence of death has been imposed, the appellate review, if any, and sentence review to or by the supreme court of Washington shall be decided and an opinion on the merits shall be filed within one year of receipt by the clerk of the supreme court of Washington of the verbatim report of proceedings and clerk's papers filed under RCW 10.95.110. If this time requirement is not met, the chief justice of the supreme court of Washington shall state on the record the extraordinary and compelling circumstances causing the delay and the facts supporting such circumstances. A failure to comply with the time requirements of this subsection shall in no way preclude the ultimate execution of a sentence of death. [1988 c 202 § 17; 1981 c 138 § 15.]

Severability—1988 c 202: See note following RCW 2.24.050.

10.95.160 Death warrant—Issuance—Form—Time for execution of judgment and sentence. (1) If a death sentence is affirmed and the case remanded to the trial court as provided in RCW 10.95.140(2), a death warrant shall forthwith be issued by the clerk of the trial court, which shall be signed by a judge of the trial court and attested by the clerk thereof under the seal of the court. The warrant shall be directed to the superintendent of the state penitentiary and shall state the conviction of the person named therein and the judgment and sentence of the court, and shall appoint a day on which the judgment and sentence of the court shall be executed by the superintendent, which day shall not be less than thirty nor more than ninety days from the date the trial court receives the remand from the supreme court of Washington.

(2) If the date set for execution under subsection (1) of this section is stayed by a court of competent jurisdiction for any reason, the new execution date is automatically set at thirty judicial days after the entry of an order of termination or vacation of the stay by such court unless the court invalidates the conviction, sentence, or remands for further judicial proceedings. The presence of the inmate under sentence of death shall not be required for the court to vacate or terminate the stay according to this section. [1990 c 263 § 1; 1981 c 138 § 16.]

10.95.170 Imprisonment of defendant. The defendant shall be imprisoned in the state penitentiary within ten days after the trial court enters a judgment and sentence imposing the death penalty and shall be imprisoned both prior to and subsequent to the issuance of the death warrant as provided in RCW 10.95.160. During such period of imprisonment, the defendant shall be confined in the segregation unit, where the defendant may be confined with other prisoners not under sentence of death, but prisoners under sentence of death shall be assigned to single-person cells. [1983 c 255 § 1; 1981 c 138 § 17.]

Severability—1983 c 255: See RCW 72.74.900.

Convicted female persons. commitment and procedure as to death sentences: RCW 72.02.250.

10.95.180 Death penalty—How executed. (1) The punishment of death shall be supervised by the superintendent of the penitentiary and shall be inflicted by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until the defendant is dead, or, at the election of the defendant, by hanging by the neck until the defendant is dead. In any case, death shall be pronounced by a licensed physician.

(2) All executions, for both men and women, shall be carried out within the walls of the state penitentiary. [1996 c 251 § 1; 1986 c 194 § 1; 1981 c 138 § 18.]

Severability—1996 c 251: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 251 § 2.]

10.95.185 Witnesses. (1) Not less than twenty days prior to a scheduled execution, judicial officers, media representatives, representatives from the families of the

victims, and representatives from the family of the defendant who wish to attend and witness the execution, must submit an application to the superintendent. Such application must designate the relationship and reason for wishing to attend.

(2) Not less than fifteen days prior to the scheduled execution, the superintendent shall designate the total number of individuals who will be allowed to attend and witness the planned execution. The superintendent shall determine the number of witnesses that will be allowed in each of the following categories:

- (a) Media representatives.
- (b) Judicial officers.
- (c) Representatives from the families of victims.
- (d) Representatives from the family of the defendant.

After the list is composed, the superintendent shall serve this list on all parties who have submitted an application pursuant to this section. The superintendent shall develop and implement procedures to determine the persons within each of the categories listed in this subsection who will be allowed to attend and witness the execution.

(3) Not less than ten days prior to the scheduled execution, the superintendent shall file the witness list with the superior court from which the conviction and death warrant was issued with a petition asking that the court enter an order certifying this list as a final order identifying the witnesses to attend the execution. The final order of the court certifying the witness list shall not be entered less than five days after the filing of the petition.

(4) Unless a show cause petition is filed with the superior court from which the conviction and death warrant was issued within five days of the filing of the superintendent's petition, the superintendent's list, by order of the superior court, becomes final, and no other party has standing to challenge its appropriateness.

(5) In no case may the superintendent or the superior court order or allow more than seventeen individuals other than required staff to witness a planned execution.

(6) All witnesses must adhere to the search and security provisions of the department of corrections' policy regarding the witnessing of an execution.

(7) The superior court from which the conviction and death warrant was issued is the exclusive court for seeking judicial process for the privilege of attending and witnessing an execution.

(8) For purposes of this section:

(a) "Judicial officer" means: (i) The superior court judge who signed the death warrant issued pursuant to RCW 10.95.160 for the execution of the individual, (ii) the current prosecuting attorney of the county from which the final judgment and sentence and death warrant were issued, and (iii) the most recent attorney of record representing the individual sentenced to death.

(b) "Media representatives" means representative members of all forms of media.

(c) "Representative from the family of the victim" means a representative from the immediate family of a victim of the individual sentenced to death.

(d) "Representative from the family of the defendant" means a representative from the immediate family of the individual sentenced to death.

(e) "Superintendent" means the superintendent of the Washington state penitentiary. [1993 c 463 § 2.]

Policy—1993 c 463: "The legislature declares that, to the extent that the attendance of witnesses can be accommodated without compromising the security or the orderly operation of the Washington state penitentiary, it is the policy of the state of Washington to provide authorized individuals the opportunity to attend and witness the execution of an individual sentenced to death pursuant to chapter 10.95 RCW. Further, it is the policy of the state of Washington to provide for access to the execution to credentialed members of the media." [1993 c 463 § 1.]

Severability—1993 c 463: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 463 § 3.]

10.95.190 Death warrant—Record—Return to trial court. (1) The superintendent of the state penitentiary shall keep in his or her office as part of the public records a book in which shall be kept a copy of each death warrant together with a complete statement of the superintendent's acts pursuant to such warrants.

(2) Within twenty days after each execution of a sentence of death, the superintendent of the state penitentiary shall return the death warrant to the clerk of the trial court from which it was issued with the superintendent's return thereon showing all acts and proceedings done by him or her thereunder. [1981 c 138 § 19.]

10.95.200 Proceedings for failure to execute on day named. Whenever the day appointed for the execution of a defendant shall have passed, from any cause, other than the issuance of a stay by a court of competent jurisdiction, without the execution of such defendant having occurred, the trial court which issued the original death warrant shall issue a new death warrant in accordance with RCW 10.95.160. The defendant's presence before the court is not required. However, nothing in this section shall be construed as restricting the defendant's right to be represented by counsel in connection with issuance of a new death warrant. [1990 c 263 § 2; 1987 c 286 § 1; 1981 c 138 § 20.]

10.95.900 Severability—1981 c 138. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 138 § 22.]

Chapter 10.97

**WASHINGTON STATE CRIMINAL RECORDS
PRIVACY ACT**

Sections

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10.97.130 Child victims of sexual assaults, identification confidential.
Records of rape crisis centers not available as part of discovery: RCW 70.125.065.

10.97.010 Declaration of policy. The legislature declares that it is the policy of the state of Washington to provide for the completeness, accuracy, confidentiality, and security of criminal history record information and victim, witness, and complainant record information as defined in this chapter. [1977 ex.s. c 314 § 1.]

10.97.020 Short title. This chapter may be cited as the Washington State Criminal Records Privacy Act. [1977 ex.s. c 314 § 2.]

Reviser's note: The phrase "This 1977 amendatory act" has been changed to "This chapter." This 1977 amendatory act [1977 ex.s. c 314] consists of chapter 10.97 RCW and the amendments of RCW 42.17.310, 43.43.705, 43.43.710, 43.43.730, and 43.43.810.

10.97.030 Definitions. For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed

since arrest, citation, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges other than: (a) A decision not to prosecute; (b) a dismissal; or (c) acquittal; with the following exceptions, which shall be considered dispositions adverse to the subject: An acquittal due to a finding of not guilty by reason of insanity and a dismissal by reason of incompetency, pursuant to chapter 10.77 RCW; and a dismissal entered after a period of probation, suspension, or deferral of sentence.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single record keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination. [1998 c 297 § 49; 1990 c 3 § 128; 1979 ex.s. c 36 § 1; 1979 c 158 § 5; 1977 ex.s. c 314 § 3.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.97.040 Disposition of charge included with information—Current and complete information required—Exceptions. No criminal justice agency shall disseminate criminal history record information pertaining to an arrest, detention, indictment, information, or other formal criminal charge made after December 31, 1977, unless the record disseminated states the disposition of such charge to the extent dispositions have been made at the time of the

request for the information: PROVIDED, HOWEVER, That if a disposition occurring within ten days immediately preceding the dissemination has not been reported to the agency disseminating the criminal history record information, or if information has been received by the agency within the seventy-two hours immediately preceding the dissemination, that information shall not be required to be included in the dissemination: PROVIDED FURTHER, That when another criminal justice agency requests criminal history record information, the disseminating agency may disseminate specific facts and incidents which are within its direct knowledge without furnishing disposition data as otherwise required by this section, unless the disseminating agency has received such disposition data from either: (1) the state patrol, or (2) the court or other criminal justice agency required to furnish disposition data pursuant to RCW 10.97.045.

No criminal justice agency shall disseminate criminal history record information which shall include information concerning a felony or gross misdemeanor without first making inquiry of the identification section of the Washington state patrol for the purpose of obtaining the most current and complete information available, unless one or more of the following circumstances exists:

(1) The information to be disseminated is needed for a purpose in the administration of criminal justice for which time is of the essence and the identification section is technically or physically incapable of responding within the required time;

(2) The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of the agency which disseminates the information;

(3) The full information requested and to be disseminated is contained in a criminal history record information summary received from the identification section by the agency which is to make the dissemination not more than thirty days preceding the dissemination to be made;

(4) The statute, executive order, court rule, or court order pursuant to which the information is to be disseminated refers solely to information in the files of the agency which makes the dissemination;

(5) The information requested and to be disseminated is for the express purpose of research, evaluative, or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is directly sought; or

(6) A person who is the subject of the record requests the information and the agency complies with the requirements in RCW 10.97.080 as now or hereafter amended. [1979 ex.s. c 36 § 2; 1977 ex.s. c 314 § 4.]

10.97.045 Disposition data to initiating agency and state patrol. Whenever a court or other criminal justice agency reaches a disposition of a criminal proceeding, the court or other criminal justice agency shall furnish the disposition data to the agency initiating the criminal history record for that charge and to the identification section of the Washington state patrol as required under RCW 43.43.745. [1979 ex.s. c 36 § 6.]

10.97.050 Certain information as restricted or unrestricted—Records. (1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

(a) An indication of to whom (agency or person) criminal history record information was disseminated;

(b) The date on which the information was disseminated;

(c) The individual to whom the information relates; and

(d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

(8) In addition to the other provisions in this section allowing dissemination of criminal history record information, RCW 4.24.550 governs dissemination of information concerning offenders who commit sex offenses as defined by RCW 9.94A.030. Criminal justice agencies, their employees, and officials shall be immune from civil liability for dissemination on criminal history record information concerning sex offenders as provided in RCW 4.24.550. [1990 c 3 § 129; 1977 ex.s. c 314 § 5.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.97.060 Deletion of certain information, conditions. Criminal history record information which consists of nonconviction data only shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to the defendant, or upon the passage of three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of nonconviction data shall be deleted upon the request of the person who is the subject of the record: PROVIDED, HOWEVER, That the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if:

(1) The disposition was a deferred prosecution or similar diversion of the alleged offender;

(2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;

(3) The individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event. [1977 ex.s. c 314 § 6.]

10.97.070 Discretionary disclosure of suspect's identity to victim. (1) Criminal justice agencies may, in their discretion, disclose to persons who have suffered physical loss, property damage, or injury compensable through civil action, the identity of persons suspected as being responsible for such loss, damage, or injury together with such information as the agency reasonably believes may be of assistance to the victim in obtaining civil redress. Such disclosure may be made without regard to whether the suspected offender is an adult or a juvenile, whether charges

have or have not been filed, or a prosecuting authority has declined to file a charge or a charge has been dismissed.

(2) Unless the agency determines release would interfere with an ongoing criminal investigation, in any action brought pursuant to this chapter, criminal justice agencies shall disclose identifying information, including photographs of suspects, if the acts are alleged by the plaintiff or victim to be a violation of RCW 9A.50.020.

(3) The disclosure by a criminal justice agency of investigative information pursuant to subsection (1) of this section shall not establish a duty to disclose any additional information concerning the same incident or make any subsequent disclosure of investigative information, except to the extent an additional disclosure is compelled by legal process. [1993 c 128 § 10; 1977 ex.s. c 314 § 7.]

Severability—Effective date—1993 c 128: See RCW 9A.50.901 and 9A.50.902.

10.97.080 Inspection of information by subject—Challenges and corrections. All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.17 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information. [1979 ex.s. c 36 § 3; 1977 ex.s. c 314 § 8.]

10.97.090 Administration by state patrol—Powers and duties. The Washington state patrol is hereby designated the agency of state government responsible for the administration of the 1977 Washington State Criminal Records Privacy Act. The Washington state patrol may adopt any rules and regulations necessary for the performance of the administrative functions provided for in this chapter.

The Washington state patrol shall have the following specific administrative duties:

(1) To establish by rule and regulation standards for the security of criminal history information systems in order that such systems and the data contained therein be adequately protected from fire, theft, loss, destruction, other physical hazard, or unauthorized access;

(2) To establish by rule and regulation standards for personnel employed by criminal justice of other state and local government agencies in positions with responsibility for maintenance and dissemination of criminal history record information; and

(3) To contract with the Washington state auditor or other public or private agency, organization, or individual to perform audits of criminal history record information systems. [1979 ex.s. c 36 § 4; 1977 ex.s. c 314 § 9.]

10.97.100 Fees. Criminal justice agencies shall be authorized to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons other than criminal justice agencies. [1977 ex.s. c 314 § 10.]

10.97.110 Civil remedies—Criminal prosecution not affected. Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of this chapter. [1979 ex.s. c 36 § 5; 1977 ex.s. c 314 § 11.]

10.97.120 Criminal penalties—Civil action not affected. Violation of the provisions of this chapter shall constitute a misdemeanor, and any person whether as principal, agent, officer, or director for himself or for another person, or for any firm or corporation, public or private, or any municipality who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation. Any criminal prosecution shall not

affect the right of any person to bring a civil action as authorized by this chapter or otherwise authorized by law. [1977 ex.s. c 314 § 12.]

10.97.130 Child victims of sexual assaults, identification confidential. Information identifying child victims under age eighteen who are victims of sexual assaults is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying the child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault. Prior to release of any criminal history record information, the releasing agency shall delete any information identifying a child victim of sexual assault from the information except as provided in this section. [1992 c 188 § 8.]

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

Chapter 10.98

CRIMINAL JUSTICE INFORMATION ACT

Sections

10.98.010	Purpose.
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10.98.110	Tracking of felony cases.
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10.98.150	Release of information on suspected or convicted felons.
10.98.160	Procedures, development considerations—Executive committee, review and recommendations.

10.98.010 Purpose. The purpose of this chapter is to provide a system of reporting and disseminating felony criminal justice information that provides: (1) Timely and accurate criminal histories for filing and sentencing under the sentencing reform act of 1981, (2) identification and tracking of felons, and (3) data for state-wide planning and forecasting of the felon population. [1984 c 17 § 1.]

10.98.020 Short title. This chapter may be known and cited as the criminal justice information act. [1984 c 17 § 2.]

10.98.030 Source of conviction histories. The Washington state patrol *identification and criminal history section as established in RCW 43.43.700 shall be the

primary source of felony conviction histories for filings, plea agreements, and sentencing on felony cases. [1984 c 17 § 3.]

***Reviser's note:** The "identification and criminal history section" has been redesignated the "identification, child abuse, and criminal history section." See RCW 43.43.700.

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

(1) "Arrest and fingerprint form" means the reporting form prescribed by the *identification and criminal history section to initiate compiling arrest and identification information.

(2) "Chief law enforcement officer" includes the sheriff or director of public safety of a county, the chief of police of a city or town, and chief officers of other law enforcement agencies operating within the state.

(3) "Department" means the department of corrections.

(4) "Disposition" means the conclusion of a criminal proceeding at any stage it occurs in the criminal justice system. Disposition includes but is not limited to temporary or permanent outcomes such as charges dropped by police, charges not filed by the prosecuting attorney, deferred prosecution, defendant absconded, charges filed by the prosecuting attorney pending court findings such as not guilty, dismissed, guilty, or guilty—case appealed to higher court.

(5) "Disposition report" means the reporting form prescribed by the *identification and criminal history section to report the legal procedures taken after completing an arrest and fingerprint form. The disposition report shall include but not be limited to the following types of information:

- (a) The type of disposition;
- (b) The statutory citation for the arrests;
- (c) The sentence structure if the defendant was convicted of a felony;
- (d) The state identification number; and
- (e) Identification information and other information that is prescribed by the *identification and criminal history section.

(6) "Fingerprints" means the fingerprints taken from arrested or charged persons under the procedures prescribed by the Washington state patrol *identification and criminal history section.

(7) "Prosecuting attorney" means the public or private attorney prosecuting a criminal case.

(8) "Section" refers to the Washington state patrol section on *identification and criminal history.

(9) "Sentence structure" means itemizing the components of the felony sentence. The sentence structure shall include but not be limited to the total or partial confinement sentenced, and whether the sentence is prison or jail, community supervision, fines, restitution, or community service. [1985 c 201 § 1; 1984 c 17 § 4.]

***Reviser's note:** The "identification and criminal history section" has been redesignated the "identification, child abuse, and criminal history section." See RCW 43.43.700.

10.98.050 Fingerprints, identifying data, and disposition reports from various officials. (1) It is the

duty of the chief law enforcement officer or the local director of corrections to transmit within seventy-two hours from the time of arrest to the section fingerprints together with other identifying data as may be prescribed by the section, and statutory violations of any person lawfully arrested, fingerprinted, and photographed under RCW 43.43.735. The disposition report shall be transmitted to the prosecuting attorney.

(2) At the preliminary hearing or the arraignment of a felony case, the judge shall ensure that the felony defendants have been fingerprinted and an arrest and fingerprint form transmitted to the section. In cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the local director of corrections, or, in the case of a juvenile, the juvenile court administrator to initiate an arrest and fingerprint form and transmit it to the section. The disposition report shall be transmitted to the prosecuting attorney. [1989 c 6 § 1; 1987 c 450 § 6; 1985 c 201 § 2; 1984 c 17 § 5.]

10.98.060 Arrest and fingerprint form. The arrest and fingerprint form shall include but not be limited to the following:

(1) Unique numbers associated with the arrest charges. The unique numbering system may be controlled by the local law enforcement agency, however the section shall approve of the numbering system and maintain a current catalog of approved local numbering systems. The purpose of the unique numbering system is to allow tracking of arrest charges through disposition;

- (2) An organization code;
- (3) Date of arrest;
- (4) Local identification number;
- (5) The prescribed fingerprints;
- (6) Individual identification information and other information prescribed by the section. [1984 c 17 § 6.]

10.98.070 Participation in national crime information center interstate identification index. The section shall be the sole recipient of arrest and fingerprint forms described in RCW 10.98.060, fingerprint forms described in RCW 43.43.760, and disposition reports for forwarding to the federal bureau of investigation as required for participation in the national crime information center interstate identification index. The section shall comply with national crime information center interstate identification index regulations to maintain availability of out-of-state criminal history information. [1984 c 17 § 7.]

10.98.080 State identification number, furnishing of. The section shall promptly furnish a state identification number to the originating agency and to the prosecuting attorney who received a copy of the arrest and fingerprint form. In the case of juvenile felony-like adjudications, the section shall furnish, upon request, the state identification number to the juvenile information section of the administrator for the courts. [1985 c 201 § 3; 1984 c 17 § 8.]

10.98.090 Disposition forms—Coding. (1) In all cases where an arrest and fingerprint form is transmitted to the section, the originating agency shall code the form

indicating which agency is initially responsible for reporting the disposition to the section. Coding shall include but not be limited to the prosecuting attorney, superior court, district court, municipal court, or the originating agency.

(2) In the case of a superior court or felony disposition, the county clerk or prosecuting attorney shall promptly transmit the completed disposition information to the section. In a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the county clerk shall electronically provide the disposition information. In the case of a felony conviction in a county without the judicial information system or other secure method of electronic transfer of information between the court and the section, the prosecuting attorney shall attach a copy of the judgment and sentence form to the disposition form transmitted to the section. In the case of a lower court disposition, the district or municipal court administrator shall either promptly transmit the completed disposition form or, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, electronically provide the disposition information to the section. For all other dispositions the originating agency shall promptly transmit the completed disposition form to the section. [1998 c 197 § 1; 1985 c 201 § 4; 1984 c 17 § 9.]

10.98.100 Compliance audit of disposition reports.

The section shall administer a compliance audit at least once annually for each prosecuting attorney, district and municipal court, and originating agency to ensure that all disposition reports have been received and added to the criminal offender record information described in RCW 43.43.705. The section shall prepare listings of all arrests charged and listed in the criminal offender record information for which no disposition report has been received and which has been outstanding for more than nine months since the date of arrest. Each prosecuting attorney, district and municipal court, and originating agency shall be furnished a list of outstanding disposition reports. Cases pending prosecution shall be considered outstanding dispositions in the compliance audit. Within forty-five days, the prosecuting attorney, district and municipal court, and originating agency shall provide the section with a current disposition report for each outstanding disposition. The section shall assist prosecuting attorneys with the compliance audit by cross-checking outstanding cases with the administrator for the courts and the department of corrections. The section may provide technical assistance to prosecuting attorneys, district or municipal courts, or originating agencies for their compliance audits. The results of compliance audits shall be published annually and distributed to legislative committees dealing with criminal justice issues, the office of financial management, and criminal justice agencies and associations. [1985 c 201 § 5; 1984 c 17 § 10.]

10.98.110 Tracking of felony cases. (1) The department shall maintain records to track felony cases for convicted felons sentenced either to a term of confinement exceeding one year or ordered under the supervision of the de-

partment and felony cases under the jurisdiction of the department pursuant to interstate compact agreements.

(2) Tracking shall begin at the time the department receives a judgment and sentence form from a prosecuting attorney and shall include the collection and updating of felons' criminal records from the time of sentencing through discharge.

(3) The department of corrections shall collect information for tracking felons from its offices and from information provided by county clerks, the Washington state patrol *identification and criminal history section, the office of financial management, and any other public or private agency that provides services to help individuals complete their felony sentences. [1993 c 31 § 1; 1987 c 462 § 2; 1984 c 17 § 11.]

***Reviser's note:** The "identification and criminal history section" has been redesignated the "identification, child abuse, and criminal history section." See RCW 43.43.700.

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.130 Reporting of admissions and releases by local jails—Information required. Local jails shall report to the office of financial management and that office shall transmit to the department the information on all persons convicted of felonies or incarcerated for noncompliance with a felony sentence who are admitted or released from the jails and shall promptly respond to requests of the department for such data. Information transmitted shall include but not be limited to the state identification number, whether the reason for admission to jail was a felony conviction or noncompliance with a felony sentence, and the dates of the admission and release.

The office of financial management may contract with a state or local governmental agency, or combination thereof, or a private organization for the information collection and transmittal under this section. [1988 c 152 § 1; 1987 c 462 § 3; 1984 c 17 § 13.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.140 Criminal justice information—Forecasting, felons, sentences. (1) The section, the department, and the office of financial management shall be the primary sources of information for criminal justice forecasting. The information maintained by these agencies shall be complete, accurate, and sufficiently timely to support state criminal justice forecasting.

(2) The office of financial management shall be the official state agency for the sentenced felon jail forecast. This forecast shall provide at least a six-year projection and shall be published by December 1 of every even-numbered year beginning with 1986. The office of financial management shall seek advice regarding the assumptions in the forecast from criminal justice agencies and associations.

(3) The sentencing guidelines commission shall keep records on all sentencings above or below the standard range defined by chapter 9.94A RCW. As a minimum, the records shall include the name of the offender, the crimes for which the offender was sentenced, the name and county of the sentencing judge, and the deviation from the standard range. Such records shall be made available to public officials upon request. [1987 c 462 § 4; 1985 c 201 § 6; 1984 c 17 § 14.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.150 Release of information on suspected or convicted felons. The section and the department shall provide prompt responses to the requests of law enforcement agencies and jails regarding the status of suspected or convicted felons. Dissemination of individual identities, criminal histories, or the whereabouts of a suspected or convicted felon shall be in accordance with chapter 10.97 RCW, the Washington state criminal records privacy act. [1984 c 17 § 15.]

10.98.160 Procedures, development considerations—Executive committee, review and recommendations. In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrator for the courts, local law enforcement agencies, jailers, the sentencing guidelines commission, the *board of prison terms and paroles, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. An executive committee appointed by the heads of the department, the Washington state patrol, and the office of financial management shall review and provide recommendations for development and modification of the section, the department, and the office of financial management's felony criminal information systems. [1987 c 462 § 5; 1984 c 17 § 16.]

*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective dates—1987 c 462: See note following RCW 13.04.116.

Chapter 10.99

DOMESTIC VIOLENCE—OFFICIAL RESPONSE

Sections

10.99.010	Purpose—Intent.
10.99.020	Definitions.
10.99.030	Law enforcement officers—Training, powers, duties—Domestic violence reports.
10.99.040	Restrictions upon and duties of court.
10.99.045	Appearances by defendant—No-contact order.
10.99.050	Victim contact—Restriction, prohibition—Violation, penalties—Written order—Procedures.
10.99.055	Enforcement of orders.
10.99.060	Notification of victim of prosecution decision—Description of criminal procedures available.
10.99.070	Liability of peace officers.
10.99.900	Severability—1979 ex.s. c 105.

Arrest without warrant in domestic violence cases: RCW 10.31.100(2).

Domestic violence prevention: Chapter 26.50 RCW

Rape crisis centers: Chapters 70.123 and 70.125 RCW.

Shelters for victims of domestic violence: Chapter 70.123 RCW.

Victims, survivors, and witnesses of crimes: Chapter 7.69 RCW.

10.99.010 Purpose—Intent. The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse

which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship. [1979 ex.s. c 105 § 1.]

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

(1) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(2) "Dating relationship" has the same meaning as in RCW 26.50.010.

(3) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

- (a) Assault in the first degree (RCW 9A.36.011);
- (b) Assault in the second degree (RCW 9A.36.021);
- (c) Assault in the third degree (RCW 9A.36.031);
- (d) Assault in the fourth degree (RCW 9A.36.041);
- (e) Drive-by shooting (RCW 9A.36.045);
- (f) Reckless endangerment (RCW 9A.36.050);
- (g) Coercion (RCW 9A.36.070);
- (h) Burglary in the first degree (RCW 9A.52.020);
- (i) Burglary in the second degree (RCW 9A.52.030);
- (j) Criminal trespass in the first degree (RCW 9A.52.070);
- (k) Criminal trespass in the second degree (RCW 9A.52.080);
- (l) Malicious mischief in the first degree (RCW 9A.48.070);
- (m) Malicious mischief in the second degree (RCW 9A.48.080);
- (n) Malicious mischief in the third degree (RCW 9A.48.090);

- (o) Kidnapping in the first degree (RCW 9A.40.020);
- (p) Kidnapping in the second degree (RCW 9A.40.030);
- (q) Unlawful imprisonment (RCW 9A.40.040);

(r) Violation of the provisions of a restraining order restraining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care (RCW 26.09.300, 26.10.220, or 26.26.138);

(s) Violation of the provisions of a protection order or no-contact order restraining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care (RCW 26.50.060, 26.50.070, 26.50.130, 10.99.040, or 10.99.050);

- (t) Rape in the first degree (RCW 9A.44.040);
- (u) Rape in the second degree (RCW 9A.44.050);
- (v) Residential burglary (RCW 9A.52.025);
- (w) Stalking (RCW 9A.46.110); and
- (x) Interference with the reporting of domestic violence (RCW 9A.36.150).

(4) "Victim" means a family or household member who has been subjected to domestic violence. [1997 c 338 § 53; 1996 c 248 § 5; 1995 c 246 § 21; 1994 c 121 § 4; 1991 c 301 § 3; 1986 c 257 § 8; 1984 c 263 § 20; 1979 ex.s. c 105 § 2.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—1995 c 246: See note following RCW 26.50.010.

Finding—1991 c 301: "The legislature finds that:

The collective costs to the community for domestic violence include the systematic destruction of individuals and their families, lost lives, lost productivity, and increased health care, criminal justice, and social service costs.

Children growing up in violent homes are deeply affected by the violence as it happens and could be the next generation of batterers and victims.

Many communities have made headway in addressing the effects of domestic violence and have devoted energy and resources to stopping this violence. However, the process for breaking the cycle of abuse is lengthy. No single system intervention is enough in itself.

An integrated system has not been adequately funded and structured to assure access to a wide range of services, including those of the law/safety/justice system, human service system, and health care system. These services need to be coordinated and multidisciplinary in approach and address the needs of victims, batterers, and children from violent homes.

Given the lethal nature of domestic violence and its effect on all within its range, the community has a vested interest in the methods used to stop and prevent future violence. Clear standards of quality are needed so that perpetrator treatment programs receiving public funds or court-ordered referrals can be required to comply with these standards.

While incidents of domestic violence are not caused by perpetrator's use of alcohol and illegal substances, substance abuse may be a contributing factor to domestic violence and the injuries and deaths that result from it.

There is a need for consistent training of professionals who deal frequently with domestic violence or are in a position to identify domestic violence and provide support and information.

Much has been learned about effective interventions in domestic violence situations; however, much is not yet known and further study is required to know how to best stop this violence." [1991 c 301 § 1.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Domestic violence defined under the Domestic Violence Prevention Act: RCW 26.50.010.

10.99.030 Law enforcement officers—Training, powers, duties—Domestic violence reports. (1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) The criminal justice training commission shall implement by January 1, 1997, a course of instruction for the training of law enforcement officers in Washington in the handling of domestic violence complaints. The basic law enforcement curriculum of the criminal justice training commission shall include at least twenty hours of basic training instruction on the law enforcement response to domestic violence. The course of instruction, the learning and performance objectives, and the standards for the training shall be developed by the commission and focus on enforcing the criminal laws, safety of the victim, and holding the perpetrator accountable for the violence. The curriculum shall include training on the extent and prevalence of domestic violence, the importance of criminal justice intervention, techniques for responding to incidents that minimize the likelihood of officer injury and that promote victim safety, investigation and interviewing skills, evidence gathering and report writing, assistance to and services for victims and children, verification and enforcement of court orders, liability, and any additional provisions that are necessary to carry out the intention of this subsection.

(3) The criminal justice training commission shall develop and update annually an in-service training program to familiarize law enforcement officers with the domestic violence laws. The program shall include techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of all parties. The commission shall make the training program available to all law enforcement agencies in the state.

(4) Development of the training in subsections (2) and (3) of this section shall be conducted in conjunction with agencies having a primary responsibility for serving victims of domestic violence with emergency shelter and other services, and representatives to the state-wide organization providing training and education to these organizations and to the general public.

(5) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.

(6)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.

(7) When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any municipal, district, or superior court.

Information about shelters and alternatives to domestic violence is available from a state-wide twenty-four-hour toll-free hot line at (include appropriate phone number). The battered women's shelter and other resources in your area are (include local information)"

(8) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(9) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

(10) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(11) Records kept pursuant to subsections (6) and (10) of this section shall be made identifiable by means of a departmental code for domestic violence.

(12) Commencing January 1, 1994, records of incidents of domestic violence shall be submitted, in accordance with procedures described in this subsection, to the Washington association of sheriffs and police chiefs by all law enforcement agencies. The Washington criminal justice training commission shall amend its contract for collection of state-wide crime data with the Washington association of sheriffs and police chiefs:

(a) To include a table, in the annual report of crime in Washington produced by the Washington association of sheriffs and police chiefs pursuant to the contract, showing the total number of actual offenses and the number and percent of the offenses that are domestic violence incidents for the following crimes: (i) Criminal homicide, with subtotals for murder and nonnegligent homicide and man-

slaughter by negligence; (ii) forcible rape, with subtotals for rape by force and attempted forcible rape; (iii) robbery, with subtotals for firearm, knife or cutting instrument, or other dangerous weapon, and strongarm robbery; (iv) assault, with subtotals for firearm, knife or cutting instrument, other dangerous weapon, hands, feet, aggravated, and other nonaggravated assaults; (v) burglary, with subtotals for forcible entry, nonforcible unlawful entry, and attempted forcible entry; (vi) larceny theft, except motor vehicle theft; (vii) motor vehicle theft, with subtotals for autos, trucks and buses, and other vehicles; (viii) arson; and (ix) violations of the provisions of a protection order or no-contact order restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, provided that specific appropriations are subsequently made for the collection and compilation of data regarding violations of protection orders or no-contact orders;

(b) To require that the table shall continue to be prepared and contained in the annual report of crime in Washington until that time as comparable or more detailed information about domestic violence incidents is available through the Washington state incident based reporting system and the information is prepared and contained in the annual report of crime in Washington; and

(c) To require that, in consultation with interested persons, the Washington association of sheriffs and police chiefs prepare and disseminate procedures to all law enforcement agencies in the state as to how the agencies shall code and report domestic violence incidents to the Washington association of sheriffs and police chiefs. [1996 c 248 § 6; 1995 c 246 § 22; 1993 c 350 § 3; 1984 c 263 § 21; 1981 c 145 § 5; 1979 ex.s. c 105 § 3.]

Educational manual and training curriculum: "(1) By January 1, 1997, the criminal justice training commission shall develop an educational manual and a training curriculum for prosecutors in Washington state regarding domestic violence. The manual and curriculum shall include but not be limited to: The nature, extent, and causes of domestic violence; laws on domestic violence; practices designed to promote safety of the victim and other family and household members, including safety plans; the responsibility and authority of the criminal justice system to intervene in domestic violence; considerations that should go into screening and charging decisions; violations of court orders; trial tactics; evidence collection; victim advocates; considerations that should go into effective sentencing dispositions related to victim safety and perpetrator accountability; lethality; and community resources for victims, perpetrators, and children.

(2) By July 1, 1998, the commission shall distribute a copy of the manual and curriculum specified in subsection (1) of this section to the prosecuting attorney for each county and unit of government for their use in education and training.

(3) The manual and curriculum specified in subsection (1) of this section shall be developed in conjunction with agencies responsible for prosecuting domestic violence cases, agencies having a primary responsibility for serving victims of domestic violence with emergency shelter and other services, representatives of the state-wide organization providing training and education to these organizations and the general public, and others with a demonstrated expertise on domestic violence and the criminal justice system." [1995 c 246 § 24.]

Severability—1995 c 246: See note following RCW 26.50.010.

Findings—Severability—1993 c 350: See notes following RCW 26.50.035.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

10.99.040 Restrictions upon and duties of court. (1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim. In issuing the order, the court shall consider the provisions of RCW 9A.41.800. The no-contact order shall also be issued in writing as soon as possible.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2) or (3) of this section is a gross misdemeanor except as provided in (b) and (c) of this subsection (4). Upon conviction and in addition to other penalties provided by law, the court may require that the defendant submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The court also may include a requirement that the defendant pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(b) Any assault that is a violation of an order issued under this section and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony punishable under chapter 9A.20 RCW, and any conduct in violation of a protective order issued under this section that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony punishable under chapter 9A.20 RCW.

(c) A willful violation of a court order issued under this section is a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order issued under this chapter, a domestic violence protection order issued under chapter 26.09, 26.10, 26.26, or 26.50 RCW, or any federal or out-of-state order that is comparable to a no-contact order or protection order issued under Washington law. The previous convictions may involve the same victim or other victims specifically protected by the no-contact orders or protection orders the offender violated.

(d) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order." A certified copy of the order shall be provided to the victim. If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed. Such orders need not be entered into the computer-based criminal intelligence information system in this state which is used by law enforcement agencies to list outstanding warrants.

(5) Whenever an order prohibiting contact is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall forthwith enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. [1997 c 338 § 54; 1996 c 248 § 7; 1995 c 246 § 23; 1994 sp.s. c 7 § 449; 1992 c 86 § 2; 1991 c 301 § 4; 1985 c 303 § 10; 1984 c 263 § 22; 1983 c 232 § 7; 1981 c 145 § 6; 1979 ex.s. c 105 § 4.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—1995 c 246: See note following RCW 26.50.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 c 232: See note following RCW 9.41.010.

Child abuse, temporary restraining order: RCW 26.44.063.

Orders for protection in cases of domestic violence: RCW 26.50.030, 26.50.070.

Temporary restraining order: RCW 26.09.060.

10.99.045 Appearances by defendant—No-contact order. (1) A defendant arrested for an offense involving domestic violence as defined by RCW 10.99.020 shall be required to appear in person before a magistrate within one judicial day after the arrest.

(2) A defendant who is charged by citation, complaint, or information with an offense involving domestic violence as defined by RCW 10.99.020 and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of the appearances provided in subsection (1) or (2) of this section, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment. The court may include in the order any conditions authorized under RCW 9.41.800.

(4) Appearances required pursuant to this section are mandatory and cannot be waived.

(5) The no-contact order shall be issued and entered with the appropriate law enforcement agency pursuant to the procedures outlined in RCW 10.99.040 (2) and (4). [1998 c 55 § 2; 1994 sp.s. c 7 § 450; 1984 c 263 § 23; 1983 c 232 § 8; 1981 c 145 § 7.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 c 232: See note following RCW 9.41.010.

10.99.050 Victim contact—Restriction, prohibition—Violation, penalties—Written order—Procedures.

(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2) Willful violation of a court order issued under this section is a gross misdemeanor. Any assault that is a violation of an order issued under this section and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this section that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. A willful violation of a court order issued under this section is also a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order issued under this chapter, or a domestic violence protection order issued under chapter 26.09, 26.10, 26.26, or 26.50 RCW, or any federal or out-of-state order that is comparable to a no-contact order or protection order that is issued under Washington law. The previous convictions may involve the same victim or other victims specifically protected by the no-contact orders or protection orders the offender violated.

The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal

offense under chapter 10.99 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(3) Whenever an order prohibiting contact is issued pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall forthwith enter the order for one year into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. [1997 c 338 § 55; 1996 c 248 § 8; 1991 c 301 § 5; 1985 c 303 § 12; 1984 c 263 § 24; 1979 ex.s. c 105 § 5.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

10.99.055 Enforcement of orders. A peace officer in this state shall enforce an order issued by any court in this state restricting a defendant's ability to have contact with a victim by arresting and taking the defendant into custody, pending release on bail, personal recognizance, or court order, when the officer has probable cause to believe that the defendant has violated the terms of that order. [1984 c 263 § 25; 1983 c 232 § 9; 1981 c 145 § 8.]

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 c 232: See note following RCW 9.41.010.

10.99.060 Notification of victim of prosecution decision—Description of criminal procedures available.

The public attorney responsible for making the decision whether or not to prosecute shall advise the victim of that decision within five days, and, prior to making that decision shall advise the victim, upon the victim's request, of the status of the case. Notification to the victim that charges will not be filed shall include a description of the procedures available to the victim in that jurisdiction to initiate a criminal proceeding. [1979 ex.s. c 105 § 6.]

10.99.070 Liability of peace officers. A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident. [1979 ex.s. c 105 § 7.]

10.99.900 Severability—1979 ex.s. c 105. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 105 § 9.]

Chapter 10.101
INDIGENT DEFENSE SERVICES

Sections

- 10.101.005 Legislative finding.
 10.101.010 Definitions.
 10.101.020 Determination of indigency—Provisional appointment—
 Promissory note.
 10.101.030 Standards for public defense services.
 10.101.040 Selection of defense attorneys.

10.101.005 Legislative finding. The legislature finds that effective legal representation should be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches. [1989 c 409 § 1.]

10.101.010 Definitions. The following definitions shall be applied in connection with this chapter:

(1) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(2) "Indigent and able to contribute" means a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of that cost.

(3) "Anticipated cost of counsel" means the cost of retaining private counsel for representation on the matter before the court.

(4) "Available funds" means liquid assets and disposable net monthly income calculated after provision is made for bail obligations. For the purpose of determining available funds, the following definitions shall apply:

(a) "Liquid assets" means cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in motor vehicles. A motor vehicle necessary to maintain employment and having a market value not greater than three thousand dollars shall not be considered a liquid asset.

(b) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistance programs. It includes any contribution received from any family member or other person who is domiciled

in the same residence as the defendant and who is helping to defray the defendant's basic living costs.

(c) "Disposable net monthly income" means the income remaining each month after deducting federal, state, or local income taxes, social security taxes, contributory retirement, union dues, and basic living costs.

(d) "Basic living costs" means the average monthly amount spent by the defendant for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations. [1998 c 79 § 2; 1997 c 59 § 3; 1989 c 409 § 2.]

10.101.020 Determination of indigency—Provisional appointment—Promissory note. (1) A determination of indigency shall be made for all persons wishing the appointment of counsel in criminal, juvenile, involuntary commitment, and dependency cases, and any other case where the right to counsel attaches. The court or its designee shall determine whether the person is indigent pursuant to the standards set forth in this chapter.

(2) In making the determination of indigency, the court shall also consider the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services, and any other circumstances presented to the court which are relevant to the issue of indigency. The appointment of counsel shall not be denied to the person because the person's friends or relatives, other than a spouse who was not the victim of any offense or offenses allegedly committed by the person, have resources adequate to retain counsel, or because the person has posted or is capable of posting bond.

(3) The determination of indigency shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit. The court or its designee shall keep a written record of the determination of indigency. Any information given by the accused under this section or sections shall be confidential and shall not be available for use by the prosecution in the pending case.

(4) If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.

(5) All persons determined to be indigent and able to contribute, shall be required to execute a promissory note at the time counsel is appointed. The person shall be informed whether payment shall be made in the form of a lump sum payment or periodic payments. The payment and payment schedule must be set forth in writing. The person receiving the appointment of counsel shall also sign an affidavit swearing under penalty of perjury that all income and assets reported are complete and accurate. In addition, the person must swear in the affidavit to immediately report any change in financial status to the court.

(6) The office or individual charged by the court to make the determination of indigency shall provide a written report and opinion as to indigency on a form prescribed by the office of public defense, based on information obtained

from the defendant and subject to verification. The form shall include information necessary to provide a basis for making a determination with respect to indigency as provided by this chapter. [1997 c 41 § 5; 1989 c 409 § 3.]

10.101.030 Standards for public defense services.

Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington state bar association for the provision of public defense services may serve as guidelines to contracting authorities. [1989 c 409 § 4.]

10.101.040 Selection of defense attorneys. City attorneys, county prosecutors, and law enforcement officers shall not select the attorneys who will provide indigent defense services. [1989 c 409 § 5.]

Chapter 10.105

PROPERTY INVOLVED IN A FELONY

Sections

- 10.105.010 Seizure and forfeiture.
10.105.900 Application.

10.105.010 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.

A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if at the time the security interest was created, the secured party neither had knowledge of nor consented to the commission of the felony.

(2) Personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having

jurisdiction over the property. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;

(c) A law enforcement officer has probable cause to believe that the property is directly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in the commission of a felony.

(3) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. The notice of seizure may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9 RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure, the item seized shall be deemed forfeited.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional

limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. The seizing law enforcement agency shall promptly return the property to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(6) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the criminal law;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public.

(7) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the public safety and education account.

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

(b) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(c) Retained property and net proceeds not required to be paid to the state treasurer, or otherwise required to be spent under this section, shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources. [1993 c 288 § 2.]

10.105.900 Application. This chapter does not apply to property subject to forfeiture under chapter 66.32 RCW, RCW 69.50.505, 9.41.098, 9.46.231, 9A.82.100, 9A.83.030, 7.48.090, or 77.12.101. [1994 c 218 § 18; 1993 c 288 § 1.]

Effective date—1994 c 218: See note following RCW 9.46.010.

Title 11

PROBATE AND TRUST LAW

Chapters

- 11.02 General provisions.
- 11.04 Descent and distribution.
- 11.05 Uniform simultaneous death act.
- 11.07 Nonprobate assets on dissolution or invalidation of marriage.
- 11.08 Escheats.
- 11.10 Abatement of assets.
- 11.11 Testamentary disposition of nonprobate assets act.
- 11.12 Wills.
- 11.16 Jurisdiction—Venue—Notices.
- 11.18 Liability of beneficiary of nonprobate asset.
- 11.20 Custody, proof, and probate of wills.
- 11.24 Will contests.
- 11.28 Letters testamentary and of administration.
- 11.32 Special administrators.
- 11.36 Qualifications of personal representatives.
- 11.40 Claims against estate.
- 11.42 Settlement of creditor claims for estates passing without probate.
- 11.44 Inventory and appraisal.
- 11.48 Personal representatives—General provisions—Actions by and against.
- 11.54 Family support and postdeath creditor's claim exemptions.
- 11.56 Sales, exchanges, leases, mortgages, and borrowing.
- 11.60 Performance of decedent's contracts.
- 11.62 Estates under \$60,000—Disposition of property.
- 11.64 Partnership property.
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- 11.68 Settlement of estates without administration.
- 11.72 Distribution before settlement.
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- 11.80 Estates of absentees.
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- 11.86 Disclaimer of interests.
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- 11.92 Guardianship—Powers and duties of guardian or limited guardian.
- 11.94 Power of attorney.
- 11.95 Powers of appointment.
- 11.96 Jurisdiction and proceedings.
- 11.97 Effect of trust instrument.
- 11.98 Trusts.
- 11.99 Construction.
- 11.100 Investment of trust funds.
- 11.102 Common trust funds.
- 11.104 Washington principal and income act.
- 11.106 Trustees' accounting act.

- 11.108 Trust gift distribution.
- 11.110 Charitable trusts.
- 11.114 Uniform transfers to minors act.

Rules of court:

- compensation, reports: SPR 98.12W.*
 - guardians, receivers, personal representatives compromise and settlement: SPR 98.08W.*
 - receivers, reports by: SPR 98.10W.*
 - Cemetery plots, inheritance: Chapter 68.32 RCW.*
 - Community property agreements: Chapter 26.16 RCW.*
 - Coroner's duty as to property of deceased: RCW 36.24.130, 36.24.180.*
 - Court commissioners, powers in probate matters: RCW 2.24.040.*
 - Donation of human remains for medical purposes: Chapter 68.50 RCW.*
 - Evidence, transaction with person since deceased: RCW 5.60.030.*
 - Fees, collection by superior court clerk: RCW 27.24.070, 36.18.020.*
 - Joint tenancy: Chapter 64.28 RCW.*
 - Jurisdiction: RCW 2.08.010, 2.08.190; State Constitution Art. 4 §§ 4 and 6 (Amendment 28).*
 - Life insurance payable to trustee named as beneficiary in policy or will: RCW 48.18.450, 48.18.452.*
 - Partition of real property: Chapter 7.52 RCW.*
 - Production of pretended heir: Chapter 9A.60 RCW.*
 - Replacement of lost or destroyed probate records: RCW 5.48.060.*
 - Stock certificates—Joint tenancy—Transfer pursuant to direction of survivor: RCW 23B.07.240.*
 - Veterans' estates, appointment of director of veterans' affairs to act as fiduciary: RCW 73.04.130.*
- Wages*
- payment on death of employee: RCW 49.48.120.*
 - preference on death of employer: RCW 49.56.020.*
- Written finding of presumed death, missing in action, etc.: RCW 5.40.020 through 5.40.040.*

Chapter 11.02 GENERAL PROVISIONS

Sections

- 11.02.001 Section headings in Title 11 RCW not part of law.
- 11.02.005 Definitions and use of terms.
- 11.02.070 Community property—Disposition—Probate administration of.
- 11.02.080 Application and construction of act as to wills, proceedings, guardians, accrued rights, and pre-executed instruments—Severability—Effective date—1974 ex.s. c 117.
- 11.02.091 Written instrument—Limit on characterization as testamentary.
- 11.02.100 Transfer of shares of record—Dividends.
- 11.02.110 Transfer of shares or securities—Presumption of joint tenancy.
- 11.02.120 Transfer of shares—Liability.
- 11.02.130 Safe deposit repository—Lease provision ineffective to create joint tenancy or transfer at one lessee's death.
- 11.02.900 Short title—Washington trust act of 1984.
- 11.02.901 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985.
- 11.02.902 Purpose—1985 c 30.
- 11.02.903 Severability—1985 c 30.

11.02.001 Section headings in Title 11 RCW not part of law. Section headings, as found in Title 11 RCW, do not constitute any part of the law. [1985 c 30 § 3. Prior: 1984 c 149 § 179.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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 or limited guardian and special representative.

(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 deceased or 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 the deceased person's 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 or she 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 and all lawfully adopted children.

(5) "Degree of kinship" means 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 the decedent's 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) "Will" means an instrument validly executed as required by RCW 11.12.020.

(9) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled 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) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 1998.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also. [1998 c 292 § 117; 1997 c 252 § 1; 1994 c 221 § 1; 1993 c 73 § 1; 1985 c 30 § 4. Prior: 1984 c 149 § 4; 1977 ex.s. c 80 § 14; 1975-'76 2nd ex.s. c 42 § 23; 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.]

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

Application—1997 c 252: "Sections 1 through 72, chapter 252, Laws of 1997 apply to estates of decedents dying after December 31, 1997. Sections 81 through 86, chapter 252, Laws of 1997 apply to all estates, trusts, and governing instruments in existence on or at any time after March 7, 1984, and to all proceedings with respect thereto after March 7, 1984, whether the proceedings commenced before or after March 7, 1984, and including distributions made after March 7, 1984. Sections 81 through 86, chapter 252, Laws of 1997 do not apply to any governing instrument, the terms of which expressly or by necessary implication make the application of sections 81 through 86, chapter 252, Laws of 1997 inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96 RCW apply to sections 81 through 86, chapter 252, Laws of 1997." [1998 c 292 § 205; 1997 c 252 § 89.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—1984 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 149 § 181.]

Effective dates—1984 c 149: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984], except sections 1 through 98, 100 through 138, and 147 through 178 of this act which shall take effect January 1, 1985." [1984 c 149 § 180.] For codification of 1984 c 149 see Codification Tables, Volume 0.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—Construction—1975-76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Effect of decree of adoption: RCW 26.33.260.

Kindred of the half blood: RCW 11.04.035.

11.02.070 Community property—Disposition—Probate administration of. Except as provided in RCW 41.04.273 and 11.84.025, 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. [1998 c 292 § 504; 1967 c 168 § 1.]

Application—Conflict with federal requirements—1998 c 292: See notes following RCW 41.04.273.

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

Effective date—1967 c 168: "The provisions of this act shall take effect on July 1, 1967." [1967 c 168 §§ 16, 19.] For codification of 1967 c 168, see Codification Tables, Volume 0.

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

Disposition of quasi-community property: RCW 26.16.230.

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

(1) The provisions of chapter 117, Laws of 1974 ex. sess. shall apply to any wills of decedents dying thereafter;

(2) The provisions of chapter 117, Laws of 1974 ex. sess. 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 chapter 117, Laws of 1974 ex. sess.;

(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 chapter 117, Laws of 1974 ex. sess. 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 chapter 117, Laws of 1974 ex. sess. 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 chapter 117, Laws of 1974 ex. sess. applies to instruments executed before October 1, 1974 unless there is a clear indication of a contrary intent. [1974 ex.s. c 117 § 1.]

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 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 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 ex.s. c 117 § 3.]

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

11.02.091 Written instrument—Limit on characterization as testamentary. (1) An otherwise effective written instrument of transfer may not be deemed testamentary solely because of a provision for a nonprobate transfer at death in the instrument.

(2) "Provision for a nonprobate transfer at death" as used in subsection (1) of this section includes, but is not limited to, a written provision that:

(a) Money or another benefit up to that time due to, controlled, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or a separate writing, including a will, executed at any time;

(b) Money or another benefit due or to become due under the instrument ceases to be payable in the event of the death of the promisee or the promisor before payment or demand; or

(c) Property, controlled by or owned by the decedent before death, that is the subject of the instrument passes to

a person the decedent designates either in the instrument or in a separate writing, including a will, executed at any time.

(3) "Otherwise effective written instrument of transfer" as used in subsection (1) of this section means: An insurance policy; a contract of employment; a bond; a mortgage; a promissory note; a certified or uncertified security; an account agreement; a compensation plan; a pension plan; an individual retirement plan; an employee benefit plan; a joint tenancy; a community property agreement; a trust; a conveyance; a deed of gift; a contract; or another written instrument of a similar nature that would be effective if it did not contain provision for a nonprobate transfer at death.

(4) This section only eliminates a requirement that instruments of transfer comply with formalities for executing wills under chapter 11.12 RCW. This section does not make a written instrument effective as a contract, gift, conveyance, deed, or trust that would not otherwise be effective as such for reasons other than failure to comply with chapter 11.12 RCW.

(5) This section does not limit the rights of a creditor under other laws of this state. [1993 c 291 § 2.]

11.02.100 Transfer of shares of record—Dividends.

Shares of record in the name of a married person may be transferred by such person, such person's agent or attorney, without the signature of such person's spouse. All dividends payable upon any shares of a corporation standing in the name of a married person, shall be paid to such married person, such person's agent or attorney, in the same manner as if such person were unmarried, and it shall not be necessary for the other spouse to join in a receipt therefor; and any proxy or power given by a married person, touching any shares of any corporation standing in such person's name, shall be valid and binding without the signature of the other spouse. [1990 c 180 § 7.]

11.02.110 Transfer of shares or securities—Presumption of joint tenancy. Whenever shares or other securities issued by domestic or foreign corporations are or have been issued or transferred to two or more persons in joint tenancy form on the books or records of the corporation, it is presumed in favor of the corporation, its registrar and its transfer agent that the shares or other securities are owned by such persons in joint tenancy and not otherwise. A domestic or foreign corporation or its registrar or transfer agent is not liable for transferring or causing to be transferred on the books of the corporation to or pursuant to the direction of the surviving joint tenant or tenants any share or shares or other securities theretofore issued by the corporation to two or more persons in joint tenancy form on the books or records of the corporation, unless the transfer was made with actual knowledge by the corporation or by its registrar or transfer agent of the existence of any understanding, agreement, condition, or evidence that the shares or securities were held other than in joint tenancy, or of the invalidity of the joint tenancy or a breach of trust by the joint tenants. [1990 c 180 § 8.]

11.02.120 Transfer of shares—Liability. Neither a domestic or foreign corporation or its registrar or transfer agent shall be liable for transferring or causing to be

transferred on the books of the corporation to or pursuant to the direction of the surviving spouse of a deceased husband or wife any share or shares or other securities theretofore issued by the corporation to the deceased or surviving spouse or both of them if the corporation or its registrar or transfer agent shall be provided with the following:

(1) A copy of an agreement which shall have been entered into between the spouses pursuant to RCW 26.16.120 and certified by the auditor of the county in this state in whose office the same shall have been recorded;

(2) A certified copy of the death certificate of the deceased spouse;

(3) An affidavit of the surviving spouse that:

(a) The shares or other securities constituted community property of the spouses at date of death of the deceased spouse and their disposition is controlled by the community property agreement;

(b) No proceedings have been instituted to contest or set aside or cancel the agreement; and that

(c) The claims of creditors have been paid or provided for. [1990 c 180 § 9.]

11.02.130 Safe deposit repository—Lease provision ineffective to create joint tenancy or transfer at one lessee's death. A provision in a lease of a safety deposit repository to the effect that two or more persons 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. [1993 c 291 § 3.]

11.02.900 Short title—Washington trust act of 1984. Chapter 149, Laws of 1984, as amended and reenacted in chapters 8, 9, 10, 11, 23, 30, and 31, Laws of 1985 shall be known as the Washington trust act of 1984. [1985 c 30 § 2.]

11.02.901 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985. (1) Nothing in chapter 8, 9, 10, 11, 23, 30, or 31, Laws of 1985 shall invalidate or nullify:

(a) Any instrument or property relationship that is executed and irrevocable as of the April 10, 1985; or

(b) Any action undertaken in a proceeding where the action was commenced before April 10, 1985, as long as the instrument, property relationship, or action complies with chapter 149, Laws of 1984.

(2) Except as specifically provided otherwise in chapter 149, Laws of 1984 as amended and reenacted in 1985, chapter 149, Laws of 1984 as amended and reenacted in 1985 shall apply to all instruments, property relationships, and proceedings existing on January 1, 1985. [1985 c 30 § 139.]

11.02.902 Purpose—1985 c 30. The purpose of this act is to make technical corrections to chapter 149, Laws of

1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution. [1985 c 30 § 1.]

11.02.903 Severability—1985 c 30. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 30 § 144.]

Chapter 11.04 DESCENT AND DISTRIBUTION

Sections

11.04.015	Descent and distribution of real and personal estate.
11.04.035	Kindred of the half blood.
11.04.041	Advancements.
11.04.060	Tenancy in dower and by curtesy abolished.
11.04.071	Survivorship as incident of tenancy by the entireties abolished.
11.04.081	Inheritance by and from any child not dependent upon marriage of parents.
11.04.085	Inheritance by adopted child.
11.04.095	Inheritance from stepparent avoids escheat.
11.04.230	United States savings bond—Effect of death of co-owner.
11.04.240	United States savings bond—Effect of beneficiary's survival of registered owner.
11.04.250	When real estate vests—Rights of heirs.
11.04.270	Limitation of liability for debts.
11.04.290	Vesting of title.

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 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 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 ex.s. c 117: See RCW 11.02.080 and notes following.

Appropriation to pay debts and expenses: Chapter 11.10 RCW.

Community property

disposition: RCW 11.02.070.

generally: Chapter 26.16 RCW.

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: Chapter 11.10 RCW.

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

Joint tenancy: Chapter 64.28 RCW.

Safe deposit repository—Lease provision ineffective to create joint tenancy or transfer at one lessee's death: RCW 11.02.130.

11.04.081 Inheritance by and from any child not dependent upon marriage of parents. For the purpose of inheritance to, through, and from any child, the effects and treatment of the parent-child relationship shall not depend upon whether or not the parents have been married. [1975-'76 2nd ex.s. c 42 § 24; 1965 c 145 § 11.04.081. Formerly RCW 11.04.080 and 11.04.090.]

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes all lawfully adopted children: 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 26.33.260.

"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

- 11.05.010 Devolution of property in case of simultaneous death of owners.
- 11.05.020 Procedure when beneficiaries die simultaneously.
- 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.
- 11.05.900 Application of chapter to prior deaths.
- 11.05.910 Construction of chapter.

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 11.07

NONPROBATE ASSETS ON DISSOLUTION OR INVALIDATION OF MARRIAGE

Sections

- 11.07.010 Nonprobate assets on dissolution or invalidation of marriage.

11.07.010 Nonprobate assets on dissolution or invalidation of marriage. (Effective until July 1, 1999.) (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other reason, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a

similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for

these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

However, for the general definition of "nonprobate asset" in this title, RCW 11.02.005 applies.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993. [1997 c 252 § 2; 1994 c 221 § 2; 1993 c 236 § 1.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.07.010 Nonprobate assets on dissolution or invalidation of marriage. (Effective July 1, 1999.) (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other reason, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge.

The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

For the general definition in this title of "nonprobate asset," see RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993. [1998 c 292 § 118; 1997 c 252 § 2; 1994 c 221 § 2; 1993 c 236 § 1.]

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Chapter 11.08 ESCHEATS

Sections

- 11.08.101 Property of deceased inmates of state institutions—Disposition after two years.
- 11.08.111 Property of deceased inmates of state institutions—Disposition within two years.
- 11.08.120 Property of deceased inmates of state institutions—Sale—Disposition of proceeds.
- 11.08.140 Escheat for want of heirs.
- 11.08.150 Title to property vests in state at death of owner.
- 11.08.160 Department of revenue—Jurisdiction—Duties.
- 11.08.170 Probate of escheat property—Notice to department of revenue.
- 11.08.180 Department of revenue to be furnished copies of documents and pleadings.
- 11.08.185 Escheat property—Records of department of revenue—Public record information.
- 11.08.200 Liability for use of escheated property.
- 11.08.205 Lease, sublease, or rental of escheated real property—Authorized—Expenses—Distribution of proceeds.
- 11.08.210 Allowance of claims, expenses, partial fees—Sale of property—Decree of distribution.
- 11.08.220 Certified copies of decree—Department of natural resources duties.
- 11.08.230 Appearance and claim of heirs—Notices to department of revenue.
- 11.08.240 Limitation on filing claim.
- 11.08.250 Order of court on establishment of claim—Park lands—Appraisal.
- 11.08.260 Payment of escheated funds to claimant.
- 11.08.270 Conveyance of escheated property to claimant.
- 11.08.280 Limitation when claimant is minor or incompetent not under guardianship.
- 11.08.290 Deposit of cash received by personal representative of escheat estate.
- 11.08.300 Transfer of property to department of revenue.

Action to recover property forfeited to state: RCW 7.56.120.

Banks, disposition of unclaimed personalty: RCW 30.44.150, 30.44.180 through 30.44.230.

Escheat of postal savings system accounts: Chapter 63.48 RCW.

Permanent common school fund, escheats as source of: RCW 28A.515.300.

Savings and loan associations, escheats: RCW 33.20.130, 33.40.110.

Social security benefits, payment to survivors or secretary of social and health services: RCW 11.66.010.

State land acquired by escheat, management: RCW 79.01.612.

Unclaimed estate, disposition: RCW 11.76.220.

Uniform unclaimed property act: Chapter 63.29 RCW.

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 corrections, 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. [1981 c 136 § 58; 1979 c 141 § 10; 1965 c 145 § 11.08.101. Prior: 1951 c 138 § 1; prior: 1923 c 113 § 1; RRS § 1363-1.]

Effective date—1981 c 136: See RCW 72.09.900.

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

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 successor or successors defined in RCW 11.62.005, where such money and property does not exceed the amount specified in RCW 6.13.030, and the successor or successors shall have furnished proof of death and an affidavit made by said successor or successors meeting the requirements of RCW 11.62.010; 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. [1990 c 225 § 2; 1973 1st ex.s. c 76 § 1; 1965 c 145 § 11.08.111. Prior: 1959 c 240 § 1; 1951 c 138 § 2.]

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

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 corrections 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. [1981 c 136 § 59; 1979 c 141 § 11; 1965 c 145 § 11.08.120. Prior: 1951 c 138 § 3; prior: 1923 c 113 § 2; RRS § 1363-2.]

Effective date—1981 c 136: See RCW 72.09.900.

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

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 Department of revenue—Jurisdiction—Duties. The department of revenue of this state shall have supervision of and jurisdiction over escheat property and may institute and prosecute any proceedings, including any proceeding under chapter 11.62 RCW, deemed necessary or proper in the handling of such property, and it shall be the duty of the department of revenue 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 department of natural resources as hereinafter provided. [1988 c 128 § 1; 1988 c 64 § 23; 1975 1st ex.s. c 278 § 1; 1965 c 145 § 11.08.160. Prior: 1955 c 254 § 4.]

Reviser's note: This section was amended by 1988 c 64 § 23 and by 1988 c 128 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

Severability—1975 1st ex.s. c 278: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 278 § 215.]

Construction—1975 1st ex.s. c 278: "The legislature hereby reaffirms its singular intent under this amendatory act to change the designation of the state tax commission to the department of revenue or the board of tax appeals, as the case may be, and to make explicit its intent that no rights, duties, obligations or benefits, of whatsoever kind, are to be construed as changed as a result of the enactment hereof." [1975 1st ex.s. c 278 § 217.]

11.08.170 Probate of escheat property—Notice to department of revenue. 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 department of revenue in writing thereof on forms furnished by the department of revenue to the county clerks. Thereafter, the department of revenue 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. The department of revenue may waive the provisions of this section in its discretion. The department shall be deemed to have waived its right to administer in such probate proceedings under RCW 11.28.120(5) unless application for appointment of the director or the director's designee is made within forty days immediately following receipt of notice of institution of proceedings. [1994 c 221 § 3; 1990 c 225 § 1; 1975 1st ex.s. c 278 § 2; 1965 c 145 § 11.08.170. Prior: 1955 c 254 § 5.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.180 Department of revenue to be furnished copies of documents and pleadings. The department of revenue 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 department. [1975 1st ex.s. c 278 § 3; 1965 c 145 § 11.08.180. Prior: 1955 c 254 § 6.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

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 department of revenue or by the administrator of the estate. [1975 1st ex.s. c 278 § 4; 1965 c 145 § 11.08.200. Prior: 1955 c 254 § 8.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

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, expenses, partial fees—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 ten 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 department of revenue 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. [1979 ex.s. c 209 § 19; 1975 1st ex.s. c 278 § 5; 1965 c 145 § 11.08.210. Prior: 1955 c 254 § 9.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.220 Certified copies of decree—Department of natural resources duties. The department of revenue 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 department of natural resources which 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. [1988 c 128 § 2; 1975 1st ex.s. c 278 § 6; 1965 c 145 § 11.08.220. Prior: 1957 c 125 § 1; 1955 c 254 § 10.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Management of acquired lands by department of natural resources: RCW 79.01.612

11.08.230 Appearance and claim of heirs—Notices to department of revenue. 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 department of revenue 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 department of revenue with any other available information bearing on the validity of the claim. [1975 1st ex.s. c 278 § 7; 1965 c 145 § 11.08.230. Prior: 1955 c 254 § 11.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

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 department of revenue, together with twenty days notice of the hearing thereon. [1975 1st ex.s. c 278 § 8; 1965 c 145 § 11.08.240. Prior: 1955 c 254 § 12.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.250 Order of court on establishment of claim—Park lands—Appraisal. 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. If, however, the escheated property shall have been transferred to the state parks and recreation commission or local jurisdiction for park purposes, the court shall order payment to the

claimant for the fair market value of the property at the time of transfer, excluding the value of physical improvements to the property while managed by a state agency or local jurisdiction. The value shall be established by independent appraisal obtained by the department of revenue. [1993 c 49 § 2; 1965 c 145 § 11.08.250. Prior: 1955 c 254 § 13.]

Park land: RCW 79.01.612.

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 or the appraised value of escheated property transferred for park purposes, a certified copy of such order shall be served upon the department of revenue which shall thereupon take any steps necessary to effect payment to the claimant out of the general fund of the state. [1993 c 49 § 3; 1975 1st ex.s. c 278 § 9; 1965 c 145 § 11.08.260. Prior: 1955 c 254 § 14.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

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 department of natural resources which shall thereupon make proper certification to the office of the governor for issuance of a quitclaim deed for the property to the claimant. [1988 c 128 § 3; 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.]

11.08.290 Deposit of cash received by personal representative of escheat estate. All cash received by the personal representative of an escheat estate shall be immediately deposited at interest for the benefit of the estate in a federally insured time or savings deposit or share account, except that the personal representative may maintain an amount not to exceed two hundred fifty dollars in a checking account. This arrangement may be changed by appropriate court order. [1979 ex.s. c 209 § 18.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.08.300 Transfer of property to department of revenue. Escheat property may be transferred to the department of revenue under the provisions of RCW 11.62.005 through 11.62.020. The department of revenue shall furnish proof of death and an affidavit made by the department which meets the requirements of RCW 11.62.010 to any person who is indebted to or has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse as a community,

which debt or personal property is an asset which is subject to probate. Upon receipt of such proof of death and affidavit, the person shall pay the indebtedness or deliver the personal property, or as much of either as is claimed, to the department of revenue pursuant to RCW 11.62.010.

The department of revenue shall file a copy of its affidavit made pursuant to chapter 11.62 RCW with the clerk of the court where any probate administration of the decedent has been commenced, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as a place for probate administration of the estate of such person. The affidavit shall be indexed under the name of the decedent in the probate index upon payment of a fee of two dollars. Any claimant to escheated funds shall have seven years from the filing of the affidavit by the department of revenue within which to file the claim. The claim shall be filed with the clerk of the court where the affidavit of the department of revenue was filed, and a copy served upon the department of revenue, together with twenty days notice of a hearing to be held thereon, and the provisions of RCW 11.08.250 through 11.08.280 shall apply. [1990 c 225 § 3.]

Chapter 11.10 ABATEMENT OF ASSETS

Sections

11.10.010	Abatement—Generally.
11.10.020	Gift from mixed separate and community property.
11.10.030	Allocation of separate and community assets.
11.10.040	Nonprobate assets.
11.10.900	Application of chapter.

11.10.010 Abatement—Generally. (1) Except as provided in subsection (2) of this section, property of a decedent abates, without preference as between real and personal property, in the following order:

- (a) Intestate property;
- (b) Residuary gifts;
- (c) General gifts;
- (d) Specific gifts.

For purposes of abatement a demonstrative gift, defined as a general gift charged on any specific property or fund, is deemed a specific gift to the extent of the value of the property or fund on which it is charged, and a general gift to the extent of a failure or insufficiency of that property or fund. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1) of this section, a gift abates as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred gift is sold, diminished, or exhausted incident to administration, not including satisfaction of debts or liabilities according to their community or separate status under RCW 11.10.030, abatement must be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

(4) To the extent that the whole of the community property is subject to abatement, the shares of the decedent and of the surviving spouse in the community property abate equally.

(5) If required under RCW 11.10.040, nonprobate assets must abate with those disposed of under the will and passing by intestacy. [1994 c 221 § 5.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.10.020 Gift from mixed separate and community property. To the extent that a gift is to be satisfied out of a source that consists of both separate and community property, unless otherwise indicated in the will it is presumed to be a gift from separate and community property in proportion to their relative value in the property or fund from which the gift is to be satisfied. [1994 c 221 § 6.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.10.030 Allocation of separate and community assets. (1) A community debt or liability is charged against the entire community property, with the surviving spouse's half and the decedent spouse's half charged equally.

(2) A separate debt or liability is charged first against separate property, and if that is insufficient against the balance of decedent's half of community property remaining after community debts and liabilities are satisfied.

(3) A community debt or liability that is also the separate debt or liability of the decedent is charged first against the whole of the community property and then against the decedent's separate property.

(4) An expense of administration is charged against the separate property and the decedent's half of the community property in proportion to the relative value of the property, unless a different charging of expenses is shown to be appropriate under the circumstances including against the surviving spouse's share of the community property.

(5) Property of a similar type, community or separate, is appropriated in accordance with the abatement priorities of RCW 11.10.010.

(6) Property that is primarily chargeable for a debt or liability is exhausted, in accordance with the abatement priorities of RCW 11.10.010, before resort is had, also in accordance with RCW 11.10.010, to property that is secondarily chargeable. [1994 c 221 § 7.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.10.040 Nonprobate assets. (1) If abatement is necessary among takers of a nonprobate asset, the court shall adopt the abatement order and limitations set out in RCW 11.10.010, 11.10.020, and 11.10.030, assigning categories in accordance with subsection (2) of this section.

(2) A nonprobate transfer must be categorized for purposes of abatement, within the list of priorities set out in RCW 11.10.010(1), as follows:

(a) All nonprobate forms of transfer under which an identifiable nonprobate asset passes to a beneficiary or beneficiaries on the event of the decedent's death, such as, but not limited to, joint tenancies and payable-on-death accounts, are categorized as specific bequests.

(b) With respect to all other interests passing under nonprobate forms of transfer, each must be categorized in

the manner that is most closely comparable to the nature of the transfer of that interest.

(3) If and to the extent that a nonprobate asset is subject to the same obligations as are assets disposed of under the decedent's will, the nonprobate assets abate ratably with the probate assets, within the categories set out in subsection (2) of this section.

(4) If the nonprobate instrument of transfer or the decedent's will expresses a different order of abatement, or if the decedent's overall dispositive plan or the express or implied purpose of the transfer would be defeated by the order of abatement stated in subsections (1) through (3) of this section, the nonprobate assets abate as may be found necessary to give effect to the intention of the decedent. [1994 c 221 § 8.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.10.900 Application of chapter. This chapter applies in all instances in which no other abatement scheme is expressly provided. [1994 c 221 § 4.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Chapter 11.11

TESTAMENTARY DISPOSITION OF NONPROBATE ASSETS ACT

Sections

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11.11.005	Construction.
11.11.007	Intent—Controversies between beneficiaries and testamentary beneficiaries.
11.11.010	Definitions.
11.11.020	Disposition of nonprobate assets under will.
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11.11.040	Right to rely on form of nonprobate asset—Discharge of financial institution or other third party.
11.11.050	Notice—Affidavit—Form—Limitation on liability for failure to provide notice.
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11.11.070	Ownership rights as between individuals preserved— Testamentary beneficiary may recover nonprobate asset from beneficiary—Limitation on action to recover.
11.11.080	Nonprobate assets not property of estate—Effect of notice on administration—Effect of preceding death of devisee or legatee.
11.11.090	Transfer of nonprobate asset to testamentary beneficiary.
11.11.100	Authority to withhold transfer—Notice—Expenses of obtaining consent, authorization, direction.
11.11.110	Adverse claim bond.
11.11.900	Short title.
11.11.901	Application of chapter.
11.11.902	Part headings and section captions not law—1998 c 292.
11.11.903	Effective dates—1998 c 292.

11.11.003 Purposes. (*Effective July 1, 1999.*) The purposes of this chapter are to:

(1) Enhance and facilitate the power of testators to control the disposition of assets that pass outside their wills;

(2) Provide simple procedures for resolution of disputes regarding entitlement to such assets; and

(3) Protect any financial institution or other third party having possession of or control over such an asset and transferring it to a beneficiary duly designated by the testator, unless that third party has been provided notice of

a testamentary disposition as required in this chapter. [1998 c 292 § 102.]

11.11.005 Construction. (*Effective July 1, 1999.*)

(1) When construing sections and provisions of this chapter, the sections and provisions must:

(a) Be liberally construed and applied to promote the purposes of this chapter;

(b) Be considered part of a general act that is intended as unified coverage of the subject matter, and no part of this chapter may be deemed impliedly repealed by subsequent legislation if the construction can be reasonably avoided;

(c) Not be held invalid because of the invalidity of other sections or provisions of this chapter as long as the section or provision in question can be given effect without regard to the invalid section or provision, and to this end the sections or provisions of this chapter are severable;

(d) Not be construed by reference to section or subsection headings as used in this chapter, since these do not constitute any part of the law;

(e) Not be deemed to alter the community or separate property nature of any asset passing outside a testator's will or any individual's community or separate rights to the asset, and a testator's community or separate property rights to the asset are not affected by whether it passes outside the will or, under this chapter, by disposition under the will; and

(f) Not be construed as authorizing or extending the authority of any financial institution or other third party to sell or otherwise create assets that would pass outside a testator's will upon such terms as would contravene any other applicable federal or state law.

(2) The sections and provisions of this chapter apply to an owner who dies while a resident of this state on or after July 1, 1999, and to a nonprobate asset the disposition of which on the death of the owner would otherwise be governed by the law of this state. [1998 c 292 § 103.]

11.11.007 Intent—Controversies between beneficiaries and testamentary beneficiaries. (*Effective July 1, 1999.*) This chapter is intended to establish ownership rights to nonprobate assets upon the death of the owner, as between beneficiaries and testamentary beneficiaries. This chapter is relevant only as to controversies between these persons, and has no bearing on the right of a person to transfer a nonprobate asset under its terms in the absence of a testamentary provision under this chapter. [1998 c 292 § 107.]

11.11.010 Definitions. (*Effective July 1, 1999.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Actual knowledge" means:

(i) For a financial institution, whether acting as personal representative or otherwise, or other third party in possession or control of a nonprobate asset, receipt of written notice that: (A) Complies with RCW 11.11.050; (B) pertains to the testamentary disposition or ownership of a nonprobate asset in its possession or control; and (C) is received by the financial institution or third party after the death of the owner in a time sufficient to afford the financial institution or third party a reasonable opportunity to act upon the knowledge; and

(ii) For a personal representative that is not a financial institution, personal knowledge or possession of documents relating to the testamentary disposition or ownership of a nonprobate asset of the owner sufficient to afford the personal representative reasonable opportunity to act upon the knowledge, including reasonable opportunity for the personal representative to provide the written notice under RCW 11.11.050.

(b) For the purposes of (a) of this subsection, notice of more than thirty days is presumed to be notice that is sufficient to afford the party a reasonable opportunity to act upon the knowledge, but notice of less than five business days is presumed not to be a sufficient notice for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(2) "Beneficiary" means the person designated to receive a nonprobate asset upon the death of the owner by means other than the owner's will.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws.

(4) "Date of will" means, as to any nonprobate asset, the date of signature of the will or codicil that refers to the asset and disposes of it.

(5) "Designate" means a written means by which the owner selects a beneficiary, including but not limited to instruments under contractual arrangements and registration of accounts, and "designation" means the selection.

(6) "Financial institution" means: A bank, trust company, mutual savings bank, savings and loan association, credit union, broker, or issuer of stock or its transfer agent.

(7)(a) "Nonprobate asset" means a nonprobate asset within the meaning of RCW 11.02.005, but excluding the following:

(i) A right or interest in real property passing under a joint tenancy with right of survivorship;

(ii) A deed or conveyance for which possession has been postponed until the death of the owner;

(iii) A right or interest passing under a community property agreement; and

(iv) An individual retirement account or bond.

(b) For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5).

(8) "Owner" means a person who, during life, has beneficial ownership of the nonprobate asset.

(9) "Request" means a request by the beneficiary for transfer of a nonprobate asset after the death of the owner, if it complies with all conditions of the arrangement, including reasonable special requirements concerning necessary signatures and regulations of the financial institution or other third party, or by the personal representative of the owner's estate or the testamentary beneficiary, if it complies with the owner's will and any additional conditions of the financial institution or third party for such transfer.

(10) "Testamentary beneficiary" means a person named under the owner's will to receive a nonprobate asset under this chapter, including but not limited to the trustee of a testamentary trust.

(11) "Third party" means a person, including a financial institution, having possession of or control over a nonprobate asset at the death of the owner, including the trustee of a

revocable living trust and surviving joint tenant or tenants. [1998 c 292 § 104.]

11.11.020 Disposition of nonprobate assets under will. (*Effective July 1, 1999.*) (1) Subject to community property rights, upon the death of an owner the owner's interest in any nonprobate asset specifically referred to in the owner's will belongs to the testamentary beneficiary named to receive the nonprobate asset, notwithstanding the rights of any beneficiary designated before the date of the will.

(2) A general residuary gift in an owner's will, or a will making general disposition of all of the owner's property, does not entitle the devisees or legatees to receive nonprobate assets of the owner.

(3) A disposition in a will of the owner's interest in "all nonprobate assets" or of all of a category of nonprobate asset under RCW 11.11.010(7), such as "all of my payable on death bank accounts" or similar language, is deemed to be a disposition of all the nonprobate assets the beneficiaries of which are designated before the date of the will.

(4) If the owner designates a beneficiary for a nonprobate asset after the date of the will, the will does not govern the disposition of that nonprobate asset. If the owner revokes the later beneficiary designation, the prior will does not govern the disposition of the nonprobate asset. A beneficiary designation with respect to an asset that renews without the signature of the owner is deemed to have been made on the date on which the account was first opened. [1998 c 292 § 105.]

11.11.030 Waiver of right to dispose of a nonprobate asset under will—Revocation of waiver. (*Effective July 1, 1999.*) An owner may waive the right to dispose of a specific nonprobate asset by will under this chapter, with or without consideration, by a written instrument signed by the owner and delivered to the financial institution or other third party, including but not limited to signature cards or deposit agreements. The waiver is revocable by written instrument delivered to the financial institution or other third party unless the owner has stated that the waiver is to be irrevocable. [1998 c 292 § 106.]

11.11.040 Right to rely on form of nonprobate asset—Discharge of financial institution or other third party. (*Effective July 1, 1999.*) In transferring nonprobate assets, a financial institution or other third party may rely conclusively and entirely upon the form of the nonprobate asset and the terms of the nonprobate asset arrangement in effect on the date of death of the owner, unless the financial institution or other third party has actual knowledge of the existence of a claim by a testamentary beneficiary. A financial institution or other third party is not required to inquire as to either the source or ownership of any nonprobate asset in its possession or under its control, or as to the proposed application of an asset so transferred. A transfer of a nonprobate asset in accordance with this section constitutes a complete release and discharge of the financial institution or other third party from all claims relating to the nonprobate asset, regardless of whether or not the transfer is consistent with the actual ownership of the nonprobate asset. [1998 c 292 § 108.]

11.11.050 Notice—Affidavit—Form—Limitation on liability for failure to provide notice. (Effective July 1, 1999.)

(1) Written notice under this chapter must be served personally or by certified mail, return receipt requested and postage prepaid, on the financial institution or other third party having the nonprobate asset in its possession or control, on the beneficiary, on the testamentary beneficiary, and on the personal representative, and proof of the mailing or service must be made by affidavit and filed under the cause number assigned to the owner's estate. Notice to a financial institution must include notice delivered as follows:

(a) If the nonprobate asset was maintained at a specific office of the financial institution, notice must be delivered to the office at which the nonprobate asset was maintained, which notice must be directed to the manager of the office;

(b) If the nonprobate asset was held in a trust administered by a financial institution, notice must be delivered to the office at which the trust was administered, which notice must be directed to a named officer responsible for the administration of the trust; and

(c) In all cases, notice must be delivered to any other location and in any other manner specifically designated in a written agreement signed by the owner and the financial institution, including but not limited to a signature card or deposit agreement.

(2) Written notice to a financial institution or other third party of the testamentary disposition of a nonprobate asset under this chapter must be in a form substantially similar to the following:

NOTICE OF TESTAMENTARY DISPOSITION OF NONPROBATE ASSET

The undersigned personal representative, petitioner for appointment as personal representative, attorney for the personal representative or petitioner, or testamentary beneficiary under the will of the decedent named above (as that term is defined in RCW 11.11.010) hereby notifies you that the decedent named above died on (DATE MUST BE SUPPLIED) and left a will dated (DATE OF WILL MUST BE SUPPLIED) disposing of the following nonprobate asset or assets in your possession or control:

(EACH SUCH ASSET MUST BE DESCRIBED WITH REASONABLE SPECIFICITY. FOR ACCOUNTS AT FINANCIAL INSTITUTIONS, THE WRITTEN NOTICE MUST SPECIFY THE OFFICE AT WHICH THE ACCOUNT WAS MAINTAINED, THE NAME OR NAMES IN WHICH THE ACCOUNT WAS HELD, AND THE FULL ACCOUNT NUMBER. FOR ASSETS HELD IN TRUST, THE WRITTEN NOTICE MUST SPECIFY THE NAME OR NAMES OF THE GRANTOR, THE NAME OF THE TRUST, IF ANY, AND THE DATE OF THE TRUST INSTRUMENT.)

Under chapter 11.11 RCW, you may not transfer, deliver, or otherwise dispose of the asset or assets listed above in accordance with the beneficiary designation, account registration, or other arrangement made with you by the decedent. You may

transfer, deliver, or otherwise dispose of the asset or assets listed above only upon receipt of the written direction of the personal representative or of the testamentary beneficiary, if the personal representative consents.

.....

 (CAPACITY OF SIGNER)

(3) The personal representative of the estate of the owner, a petitioner for appointment as personal representative, or the testamentary beneficiary may provide written notice under this section. The personal representative has no duty to provide written notice under this section and has no liability for failing or refusing to give the notice.

(4) Written notice under this section may be provided at any time after the death of the owner and before discharge of the personal representative on closing of the estate, and may be provided before admission to probate of the will. [1998 c 292 § 109.]

11.11.060 Vesting of rights and powers under chapter. (Effective July 1, 1999.)

The right to provide notice under RCW 11.11.050 and the entitlement of the testamentary beneficiary to the nonprobate asset vest immediately upon death of the owner. The power of the personal representative to direct the financial institution or other third party having the nonprobate asset in its possession or under its control to transfer or otherwise dispose of the asset arises upon the later of appointment of the personal representative or admission of the will to probate. [1998 c 292 § 110.]

11.11.070 Ownership rights as between individuals preserved—Testamentary beneficiary may recover nonprobate asset from beneficiary—Limitation on action to recover. (Effective July 1, 1999.)

(1) The protection accorded to financial institutions and other third parties under RCW 11.11.040 has no bearing on the actual rights of ownership to nonprobate assets as between beneficiaries and testamentary beneficiaries, and their heirs, successors, personal representatives, and assigns.

(2) A testamentary beneficiary entitled to a nonprobate asset otherwise transferred to a beneficiary not so entitled, and a personal representative of the owner's estate on behalf of the testamentary beneficiary, may petition the superior court having jurisdiction over the owner's estate for an order declaring that the testamentary beneficiary is so entitled, the hearing of the petition to be held in accordance with chapter 11.96 RCW.

(3) A testamentary beneficiary claiming a nonprobate asset who has not filed such a petition within the earlier of: (a) Six months from the date of admission of the will to probate; and (b) one year from the date of the owner's death, shall be forever barred from making such a claim or commencing such an action. [1998 c 292 § 111.]

11.11.080 Nonprobate assets not property of estate—Effect of notice on administration—Effect of preceding death of devisee or legatee. (Effective July 1, 1999.)

(1) Notwithstanding any provision of this chapter, a

nonprobate asset disposed of under the owner's will may not be treated as a part of the owner's probate estate for any other purpose under this title, unless:

(a) The nonprobate asset is subject to liabilities and claims, estate taxes, and expenses of administration under RCW 11.18.200; or

(b) Any section of this title directs otherwise, by specifically referring to this section.

(2) Provision of notice under this chapter has no effect on the administration of other assets of the estate of the owner. The personal representative has no duty to administer upon a nonprobate asset because of providing the notice, unless specifically required by this chapter or under RCW 11.18.200.

(3) RCW 11.12.110, regarding death of a devisee or legatee before the testator, does not apply to disposition of a nonprobate asset under a will. [1998 c 292 § 112.]

11.11.090 Transfer of nonprobate asset to testamentary beneficiary. (*Effective July 1, 1999.*) (1) A financial institution's or third party's obligation to transfer a nonprobate asset to a testamentary beneficiary arises only after it has actual knowledge of the claim of the testamentary beneficiary, and after receiving written direction from the personal representative of the owner's estate, or if the personal representative consents in writing, from the testamentary beneficiary, to make the transfer. The financial institution may also require that its customary procedures be followed in effectuating a transfer of the nonprobate asset.

(2) Subject to subsection (1) of this section, financial institutions and other third parties may transfer a nonprobate asset that has not already been distributed to the testamentary beneficiary entitled to the nonprobate asset under the owner's will, subject to liabilities and claims, estate taxes, and expenses of administration under RCW 11.18.200. [1998 c 292 § 113.]

11.11.100 Authority to withhold transfer—Notice—Expenses of obtaining consent, authorization, direction. (*Effective July 1, 1999.*) (1) This chapter does not require any financial institution or other third party to transfer a nonprobate asset to a beneficiary, testamentary beneficiary, or other person claiming an interest in the nonprobate asset if the financial institution or third party has actual knowledge of the existence of a dispute between beneficiaries, testamentary beneficiaries, or other persons concerning rights or ownership to the nonprobate asset under this chapter, or if the financial institution or third party is otherwise uncertain as to who is entitled to receive the nonprobate asset under this chapter. In any such case, the financial institution or third party may, without liability, notify in writing all beneficiaries, testamentary beneficiaries, or other persons claiming an interest in the nonprobate asset of either its uncertainty as to who is entitled to transfer of the nonprobate asset or the existence of any dispute, and it may also, without liability, refuse to transfer a nonprobate asset to a beneficiary or a testamentary beneficiary until such time as either:

(a) All the beneficiaries, testamentary beneficiaries, and other interested persons have consented in writing to the transfer; or

(b) The transfer is authorized or directed by a court of proper jurisdiction.

(2) The expense of obtaining the written consent or court authorization or direction may, by order of the court, be paid by the personal representative as an expense of administration. [1998 c 292 § 114.]

11.11.110 Adverse claim bond. (*Effective July 1, 1999.*) Notwithstanding RCW 11.11.100, a financial institution or other third party having actual knowledge of the existence of a dispute between beneficiaries, a testamentary beneficiary, or other persons concerning rights to a nonprobate asset under this chapter may condition transfer of the nonprobate asset on execution, in form and with security acceptable to the financial institution or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset on the date of the owner's death or the amount of any adverse claim, whichever is the lesser, indemnifying the financial institution or other third party from any and all liability, loss, damage, costs, and expenses, for and on account of transfer of the nonprobate asset. [1998 c 292 § 115.]

11.11.900 Short title. (*Effective July 1, 1999.*) This chapter may be known and cited as the testamentary disposition of nonprobate assets act. [1998 c 292 § 101.]

11.11.901 Application of chapter. (*Effective July 1, 1999.*) This chapter applies to any will of an owner who dies while a resident of this state on or after July 1, 1999, regardless of whether the will was executed or republished before or after July 1, 1999, and regardless of whether the beneficiary of the nonprobate asset was designated before or after July 1, 1999. [1998 c 292 § 116.]

11.11.902 Part headings and section captions not law—1998 c 292. Part headings and section captions used in this act are not any part of the law. [1998 c 292 § 601.]

11.11.903 Effective dates—1998 c 292. (1) Sections 101 through 116 and 118 of this act take effect July 1, 1999.

(2) Sections 117, 201 through 205, 301, 401, 501 through 507, and 604 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 2, 1998]. [1998 c 292 § 603.]

Chapter 11.12

WILLS

Sections

11.12.010	Who may make a will.
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- 11.12.091 Omitted child.
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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. (1) Every will shall be in writing signed by the testator or by some other person under the testator's direction in the testator's presence, and shall be attested by two or more competent witnesses, by subscribing their names to the will, or by signing an affidavit that complies with RCW 11.20.020(2), while in the presence of the testator and at the testator's direction or request: PROVIDED, That a last will and testament, executed in the mode prescribed by the law of the place where executed or of the testator's domicile, either at the time of the will's execution or at the time of the testator's death, 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.

(2) This section shall be applied to all wills, whenever executed, including those subject to pending probate proceedings. [1990 c 79 § 1; 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—Effect on codicils. (1) A will, or any part thereof, can be revoked:

(a) By a subsequent will that revokes, or partially revokes, the prior will expressly or by inconsistency; or

(b) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator or by another person in the presence and by the direction of the testator. 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.

(2) Revocation of a will in its entirety revokes its codicils, unless revocation of a codicil would be contrary to the testator's intent. [1994 c 221 § 12; 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.12.051 Dissolution or invalidation of marriage.

(1) If, after making a will, the testator's marriage is dissolved or invalidated, all provisions in the will in favor of or granting any interest or power to the testator's former spouse are revoked, unless the will expressly provides otherwise. Provisions affected by this section must be interpreted, and property affected passes, as if the former spouse failed to survive the testator, having died at the time of entry of the decree of dissolution or declaration of invalidity. Provisions revoked by this section are revived by the testator's remarriage to the former spouse. Revocation of certain nonprobate transfers is provided under RCW 11.07.010.

(2) This section is remedial in nature and applies to decrees of dissolution and declarations of invalidity entered before, on, or after January 1, 1995. [1994 c 221 § 11.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

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 Revocation of later will or codicil—Effect—Evidence. (1) If, after making any will, the testator shall execute a later will that wholly revokes the former will, the destruction, cancellation, or revocation of the later will shall not revive the former will, unless it was the testator's intention to revive it.

(2) Revocation of a codicil shall revive a prior will or part of a prior will that the codicil would have revoked had it remained in effect at the death of the testator, unless it was the testator's intention not to revive the prior will or part.

(3) Evidence that revival was or was not intended includes, in addition to a writing by which the later will or codicil is revoked, the circumstances of the revocation or contemporary or subsequent declarations of the testator. [1994 c 221 § 13; 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.12.091 Omitted child. (1) If a will fails to name or provide for a child of the decedent who is born or adopted by the decedent after the will's execution and who survives the decedent, referred to in this section as an "omitted child," the child must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(2) In determining whether an omitted child has been named or provided for, the following rules apply:

(a) A child identified in a will by name is considered named whether identified as a child or in any other manner.

(b) A reference in a will to a class described as the children, descendants, or issue of the decedent who are born

after the execution of the will, or words of similar import, constitutes a naming of a person who falls within the class. A reference to another class, such as a decedent's heirs or family, does not constitute such a naming.

(c) A nominal interest in an estate does not constitute a provision for a child receiving the interest.

(3) The omitted child must receive an amount equal in value to that which the child would have received under RCW 11.04.015 if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination, the court may consider, among other things, the various elements of the decedent's dispositive scheme, provisions for the omitted child outside the decedent's will, provisions for the decedent's other children under the will and otherwise, and provisions for the omitted child's other parent under the will and otherwise.

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.10 RCW. [1994 c 221 § 9.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.12.095 Omitted spouse. (1) If a will fails to name or provide for a spouse of the decedent whom the decedent marries after the will's execution and who survives the decedent, referred to in this section as an "omitted spouse," the spouse must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(2) In determining whether an omitted spouse has been named or provided for, the following rules apply:

(a) A spouse identified in a will by name is considered named whether identified as a spouse or in any other manner.

(b) A reference in a will to the decedent's future spouse or spouses, or words of similar import, constitutes a naming of a spouse whom the decedent later marries. A reference to another class such as the decedent's heirs or family does not constitute a naming of a spouse who falls within the class.

(c) A nominal interest in an estate does not constitute a provision for a spouse receiving the interest.

(3) The omitted spouse must receive an amount equal in value to that which the spouse would have received under RCW 11.04.015 if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination the court may consider, among other things, the spouse's property interests under applicable community property or quasi-community property laws, the various elements of the decedent's dispositive scheme, and a marriage settlement or other provision and provisions for the omitted spouse outside the decedent's will.

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.10 RCW. [1994 c 221 § 10.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.12.110 Death of grandparent's issue before grantor. Unless otherwise provided, when any property shall be given under a will, or under a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon the grantor's death, to any issue of a grandparent of the decedent and that issue dies before the decedent leaving descendants who survive the decedent, those descendants shall take that property as the predeceased issue would have done if the predeceased issue had survived the decedent. If those descendants are all in the same degree of kinship to the predeceased issue they shall take equally or, if of unequal degree, then those of more remote degree shall take by representation with respect to the predeceased issue. [1994 c 221 § 14; 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

When beneficiary with disclaimed interest deemed to have died: RCW 11.86.041.

11.12.120 Lapsed gift—Procedure and proof. (1) If a will makes a gift to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided, the gift lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of descent and distribution.

(2) If the will gives the residue to two or more persons, the share of a person who does not survive the testator passes, unless otherwise provided, and subject to RCW 11.12.110, to the other person or persons receiving the residue, in proportion to the interest of each in the remaining part of the residue.

(3) The personal representative of the testator, a person who would be affected by the lapse or distribution of a gift under this section, or a guardian ad litem or other representative appointed to represent the interests of a person so affected may petition the court for a determination under this section, and the petition must be heard under the procedures of chapter 11.96 RCW. [1994 c 221 § 15; 1974 ex.s. c 117 § 51; 1965 c 145 § 11.12.120. Prior: 1937 c 151 § 1; RRS § 1404-1.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

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

11.12.160 Interested witness—Effect on will. (1) An interested witness to a will is one who would receive a gift under the will.

(2) A will or any of its provisions is not invalid because it is signed by an interested witness. Unless there are at least two other subscribing witnesses to the will who are not interested witnesses, the fact that the will makes a gift to a subscribing witness creates a rebuttable presumption that the witness procured the gift by duress, menace, fraud, or undue influence.

(3) If the presumption established under subsection (2) of this section applies and the interested witness fails to rebut it, the interested witness shall take so much of the gift as does not exceed the share of the estate that would be distributed to the witness if the will were not established.

(4) The presumption established under subsection (2) of this section has no effect other than that stated in subsection (3) of this section. [1994 c 221 § 16; 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

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 Rule in Shelley's Case abolished—Future distribution or interest to heirs. The Rule in Shelley's Case is abolished as a rule of law and as a rule of construction. If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs," "heirs at law," "next of kin," "relatives," or "family," or language of similar import, the property passes to those persons, including the state under chapter 11.08 RCW, that would succeed to the designated individual's estate under chapter 11.04 RCW. The property must pass to those persons as if the designated individual had died when the distribution or transfer of the future interest was to take effect in possession or enjoyment. For purposes of this section and RCW 11.12.185, the designated individual's surviving spouse is deemed to be an heir, regardless of whether the surviving spouse has remarried. [1994 c 221 § 17; 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.12.185 Doctrine of Worthier Title abolished—Exception. The Doctrine of Worthier Title is abolished as a rule of law and as a rule of construction. However, the Doctrine of Worthier Title is preserved as a rule of construction if:

(1) A grantor has established in inter vivos trust of real property;

(2) The grantor has expressly reserved a reversion to himself or herself; and

(3) The words "heirs" or "heirs at law" are used by the grantor to describe the quality of the grantor's title in the reversion as an estate in fee simple in the event that the property reverts to the grantor.

In all other cases, language in a governing instrument describing the beneficiaries of a donative disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives," or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor. [1994 c 221 § 18.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

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.]

11.12.220 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 Gift to trust. A gift may be made by a will to a trustee of a trust executed by any trustor or testator (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if (1) the trust is identified in the testator's will and (2) its terms are evidenced either (a) in a written instrument other than a will, executed by the trustor prior to or concurrently with the execution of the testator's will or (b) in the will of a person who has predeceased the testator, regardless of when executed. The existence, size, or character of the corpus of the trust is immaterial to the validity of the gift. Such gift shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the testator's will or after the testator's death. Unless the will provides otherwise, the property so given 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 terms of the instrument establishing the trust, including any amendments, made prior to the death of the testator, and regardless of whether made before or after the execution of the will. Unless the will provides otherwise, an express revocation of the trust prior to the testator's death invalidates the gift. Any termination of the trust other than by express revocation does not invalidate the gift. For purposes of this section, the term "gift" includes the exercise of any testamentary power of appointment. [1985 c 23 § 2. Prior: 1984 c 149 § 5; 1965 c 145 § 11.12.250; prior: 1959 c 116 § 1.]

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—1985 c 23: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 23 § 1.]

Application—1985 c 23: "This act shall apply to wills of decedents dying after December 31, 1984." [1985 c 23 § 5.]

Severability—1985 c 23: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 23 § 6.]

Reviser's note: 1985 c 23 reenacted RCW 11.12.250 through 11.12.260 without amendment.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Trusts—Rule against perpetuities: Chapter 11.98 RCW.

11.12.255 Incorporation by reference. A will may incorporate by reference any writing in existence when the will is executed if the will itself manifests the testator's intent to incorporate the writing and describes the writing sufficiently to permit its identification. In the case of any inconsistency between the writing and the will, the will controls. [1985 c 23 § 3. Prior: 1984 c 149 § 6.]

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.12.260 Separate writing may direct disposition of tangible personal property—Requirements. (1) A will may refer to a writing that directs disposition of tangible personal property not otherwise specifically disposed of by the will other than property used primarily in trade or business. Such a writing shall not be effective unless: (a) An unrevoked will refers to the writing, (b) the writing is either in the handwriting of, or signed by, the testator, and (c) the writing describes the items and the recipients of the property with reasonable certainty.

(2) The writing may be written or signed before or after the execution of the will and need not have significance apart from its effect upon the dispositions of property made by the will. A writing that meets the requirements of this section shall be given effect as if it were actually contained in the will itself, except that if any person designated to receive property in the writing dies before the testator, the property shall pass as further directed in the writing and in the absence of any further directions, the disposition shall lapse and RCW 11.12.110 shall not apply to such lapse.

(3) The testator may make subsequent handwritten or signed changes to any writing. If there is an inconsistent disposition of tangible personal property as between writings, the most recent writing controls.

(4) As used in this section "tangible personal property" means articles of personal or household use or ornament, for example, furniture, furnishings, automobiles, boats, airplanes, and jewelry, as well as precious metals in any tangible form, for example, bullion or coins. The term includes articles even if held for investment purposes and encompasses tangible property that is not real property. The term does not include mobile homes or intangible property, for example, money that is normal currency or normal legal tender, evidences of indebtedness, bank accounts or other monetary deposits, documents of title, or securities. [1985 c 23 § 4. Prior: 1984 c 149 § 7.]

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.16
JURISDICTION—VENUE—NOTICES

Sections

- 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.

Superior court clerk, fees: RCW 36.18.020.

Unknown heirs, pleading, service, etc.: RCW 4.28.140 through 4.28.160.
Rules of court: CR 10(a).

Venue in probate and trust proceedings: RCW 11.96.050.

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. Notwithstanding any other provision of this title, no notice of any hearing in probate or probate proceeding need be given to any legally competent person who is interested in any hearing in any probate as an heir, legatee, or devisee of the decedent who has in person or by attorney waived in writing notice of such hearing or proceeding. Such waiver of notice may apply to either a specific hearing or proceeding, or to any and all hearings and proceedings to be held during the administration of the estate in which event such waiver of notice shall be of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy thereof to the personal representative and his or her attorney. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice thereof shall have waived such notice, the court may hear the matter forthwith. A guardian of the estate or a guardian ad litem may make such waivers on behalf of an incapacitated person, as defined in RCW 11.88.010, and a trustee may make such waivers on behalf of any competent or incapacitated beneficiary of his or her 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. [1996 c 249 § 7; 1977 ex.s. c 234 § 1; 1965 c 145 § 11.16.083.]

Intent—1996 c 249: See note following RCW 2.56.030.

Severability—1977 ex.s. c 234: "If any provisions of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 234 § 30.]

Effective date—Application—1977 ex.s. c 234: "This 1977 amendatory act shall take effect on October 1, 1977 and shall apply to all proceedings in probate with respect to decedents whose deaths occurred after the effective date." [1977 ex.s. c 234 § 31.]

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

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.

to creditors when personal representative resigns, dies, or is removed—Limit tolled by vacancy: RCW 11.40.150.

to department of revenue of appointment as personal representative: RCW 82.32.240.

Request for personal representative, notice of hearing: RCW 11.76.020, 11.76.040.

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

Surviving spouse, waiver of notice of hearing on petition for letters: RCW 11.28.131.

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

Chapter 11.18

**LIABILITY OF BENEFICIARY
OF NONPROBATE ASSET**

Sections

- 11.18.200 Liability of beneficiary of nonprobate asset—Abatement.

11.18.200 Liability of beneficiary of nonprobate asset—Abatement. (1) Unless expressly exempted by statute, a beneficiary of a nonprobate asset that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's death takes the asset subject to liabilities, claims, estate taxes, and the fair share of expenses of administration reasonably incurred by the personal representative in the transfer of or administration upon the asset. The beneficiary of such an asset is liable to account to the personal representative to the extent necessary to satisfy liabilities, claims, the asset's fair share of expenses of administration, and the asset's share of estate taxes under chapter 83.110 RCW. Before making demand that a beneficiary of a nonprobate asset account to the personal representative, the personal representative shall give notice to the beneficiary, in the manner provided in chapter 11.96 RCW, that the beneficiary is liable to account under this section.

(2) The following rules govern in applying subsection (1) of this section:

(a) A beneficiary of property passing at death under a community property agreement takes the property subject to the decedent's liabilities, claims, estate taxes, and administra-

tion expenses as described in subsection (1) of this section. However, assets existing as community or separate property immediately before the decedent's death under the community property agreement are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(b) A beneficiary of property held in joint tenancy form with right of survivorship, including without limitation United States savings bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(c) A beneficiary of payable-on-death or trust bank accounts, bonds, securities, or similar obligations, including without limitation United States bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(d) A beneficiary of deeds or conveyances made by the decedent if possession has been postponed until the death of the decedent takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(e) A trust for the decedent's use of which the decedent is the grantor is subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the same extent as the trust was subject to claims of the decedent's creditors immediately before death under RCW 19.36.020.

(f) A trust not for the use of the grantor but of which the decedent is the grantor and that becomes effective or irrevocable only upon the decedent's death is subject to the decedent's claims, liabilities, estate taxes, and expenses of administration as described in subsection (1) of this section.

(g) Anything in this section to the contrary notwithstanding, nonprobate assets that existed as community property immediately before the decedent's death are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(h) The liability of a beneficiary of life insurance is governed by chapter 48.18 RCW.

(i) The liability of a beneficiary of pension or retirement employee benefits is governed by chapter 6.15 RCW.

(j) An inference may not be drawn from (a) through (i) of this subsection that a beneficiary of nonprobate assets other than those assets specifically described in (a) through (i) of this subsection does or does not take the assets subject to claims, liabilities, estate taxes, and administration expenses as described in subsection (1) of this section.

(3) Nothing in this section derogates from the rights of a person interested in the estate to recover tax under chapter 83.110 RCW or from the liability of any beneficiary for estate tax under chapter 83.110 RCW.

(4) Nonprobate assets that may be responsible for the satisfaction of the decedent's general liabilities and claims abate together with the probate assets of the estate in accord

with chapter 11.10 RCW. [1997 c 252 § 3; 1994 c 221 § 19.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

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.
11.20.030	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 11.28.330 or 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. [1977 ex.s. c 234 § 2; 1974 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, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

Will contests: Chapter 11.24 RCW.

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, notary public, or other person authorized to administer an oath, empowering him or her to take and certify the attestation of such witness. [1987 c 202 § 171; 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.]

Intent—1987 c 202: See note following RCW 2.04.190.

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. (1) If a will has been lost or destroyed under circumstances such that the loss or destruction does not have the effect of revoking the will, the court may take proof of the execution and validity of the will and establish it, notice to all persons interested having been first given. The proof must be reduced to writing and signed by any witnesses who have testified as to the execution and validity, and must be filed with the clerk of the court.

(2) The provisions of a lost or destroyed will must be proved by clear, cogent, and convincing evidence, consisting at least in part of a witness to either its contents or the authenticity of a copy of the will.

(3) When a lost or destroyed will is established under subsections (1) and (2) of this section, its provisions must be distinctly stated in the judgment establishing it, and the judgment must be recorded as wills are required to be recorded. A personal representative 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. [1994 c 221 § 20; 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.
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, certified by the attestation of the clerk of the court in which such probate was made; or if there be no clerk, certification by the attestation of the judge thereof, and by the seal of such officers, if they have a seal. [1977 ex.s. c 234 § 3; 1965 c 145 § 11.20.090. Prior: 1917 c 156 § 22; RRS § 1392; prior: Code 1881 § 1370; 1877 p 284 § 1.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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 probate or rejection—Limitation of action—Issues.
 11.24.020 Citation on contest.
 11.24.030 Burden of proof.
 11.24.040 Revocation of probate.
 11.24.050 Costs.

11.24.010 Contest of probate 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 or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

If no person shall appear within the time under this section, the probate or rejection of such will shall be binding and final. [1994 c 221 § 21; 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.24.020 Citation 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 or a part of it is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will or part and probate thereof shall be annulled and revoked and to that extent the powers of the personal representative shall cease,

but the personal representative shall not be liable for any act done in good faith previous to such annulling or revoking. [1994 c 221 § 22; 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

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.
compensation—Attorney's fee: RCW 11.48.210.

Chapter 11.28
LETTERS TESTAMENTARY AND OF ADMINISTRATION

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.
 11.28.100 Form of letters with will annexed.
 11.28.110 Application for letters of administration or adjudication of intestacy and heirship.
 11.28.120 Persons entitled to letters.
 11.28.131 Hearing on petition—Appointment—Issuance of letters—Notice to surviving spouse.
 11.28.140 Form of letters of administration.
 11.28.150 Revocation of letters by discovery of will.
 11.28.160 Cancellation of letters of administration.
 11.28.170 Oath of personal representative.
 11.28.185 Bond or other security of personal representative—When not required—Waiver—Corporate trustee—Additional bond—Reduction—Other security.
 11.28.190 Examination of sureties—Additional security—Costs.
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 11.28.237 Notice of appointment as personal representative, pendency of probate—Proof by affidavit.
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 11.28.250 Revocation of letters—Causes.
 11.28.260 Revocation of letters—Proceedings in court or chambers.
 11.28.270 Powers of remaining personal representatives if letters to associates revoked or surrendered or upon disqualification.
 11.28.280 Successor personal representative.
 11.28.290 Accounting on death, resignation, or revocation of letters.
 11.28.300 Proceedings against delinquent personal representative.
 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 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 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 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 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 or 11.28.340. [1977 ex.s. c 234 § 4; 1974 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, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.28.120 Persons entitled to letters. Administration of an estate if the decedent died intestate or if the personal representative or representatives named in the will declined or were unable to serve 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 spouse, 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) The trustee named by the decedent in an inter vivos trust instrument, testamentary trustee named in the will, guardian of the person or estate of the decedent, or attorney in fact appointed by the decedent, if any such a fiduciary controlled or potentially controlled substantially all of the decedent's probate and nonprobate assets.

(4) One or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets.

(5)(a) The director of revenue, or the director's designee, for those estates having property subject to the provisions of chapter 11.08 RCW; however, the director may waive this right.

(b) The secretary of the department of social and health services for those estates owing debts for long-term care services as defined in *RCW 74.39A.008; however the secretary may waive this right.

(6) One or more of the principal creditors.

(7) If the persons so entitled shall fail for more than forty days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there is no 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. [1995 1st sp.s. c 18 § 61; 1994 c 221 § 23; 1985 c 133 § 1; 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.]

*Reviser's note: RCW 74.39A.008 was repealed by 1997 c 392 § 530.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective dates—1994 c 221: See note following RCW 11.94.070.

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 ex.s. c 117 § 44.]

Application, construction—Severability—Effective date—1974 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, 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. [1977 ex.s. c 234 § 5; 1974 ex.s. c 117 § 46.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 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—Proof by affidavit. (1) Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his or her appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him or her, and proof of such mailing or service shall be made by affidavit and filed in the cause.

(2) If the personal representative does not otherwise give notice to creditors under chapter 11.40 RCW within thirty days after appointment, the personal representative shall cause written notice of his or her appointment and the pendency of the probate proceedings to be mailed to the state of Washington department of social and health services' office of financial recovery, and proof of the mailing shall be made by affidavit and filed in the cause. [1997 c 252 § 85; 1994 c 221 § 24; 1977 ex.s. c 234 § 6; 1974 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.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.28.238 Notice of appointment as personal representative—Notice to department of revenue. Duty of personal representative to notify department of revenue 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—Prohibitions. (1) At any time after the issuance of letters testamentary or of administration or certificate of qualification upon the estate of any decedent, any person interested in the estate as an heir, devisee, distributee, legatee or creditor whose claim has been duly served and filed, or the lawyer for the heir, devisee, distributee, legatee, or creditor may serve upon the personal representative or upon the lawyer for the personal representa-

tive, and file with the clerk of the court wherein the administration of the estate is pending, a written request stating that the person desires special notice of any or all of the following named matters, steps or proceedings in the administration of the estate, to wit:

(a) Filing of petitions for sales, leases, exchanges or mortgages of any property of the estate.

(b) Petitions for any order of solvency or for nonintervention powers.

(c) Filing of accounts.

(d) Filing of petitions for distribution.

(e) Petitions by the personal representative for family allowances and homesteads.

(f) The filing of a declaration of completion.

(g) The filing of the inventory.

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

(i) Petition to continue a going business.

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

(k) Petition for judicial proceedings under chapter 11.96 RCW.

(l) Petition to reopen an estate.

(m) Intent to distribute estate assets, other than distributions in satisfaction of specific bequests or legacies of specific dollar amounts.

(n) Intent to pay attorney's or personal representative's fees.

The requests shall state the post office address of the heir, devisee, distributee, legatee or creditor, or his or her lawyer, and thereafter a brief notice of the filing of any of the petitions, accounts, declaration, inventory or claim, except petitions for sale of perishable property, or other tangible personal property which will incur expense or loss by keeping, shall be addressed to the heir, devisee, distributee, legatee or creditor, or his or her lawyer, at the post office address stated in the request, and deposited in the United States post office, with prepaid postage, at least ten days before the hearing of the petition, account or claim or of the proposed distribution or payment of fees; or personal service of the notices may be made on the heir, devisee, distributee, legatee, creditor, or lawyer, not less than five days before the hearing, and the personal service shall have the same effect as deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of the petition, account or claim or of the proposed distribution or payment of fees. If the notice has been regularly given, any distribution or payment of fees and any order or judgment, made in accord therewith is final and conclusive.

(2) Notwithstanding subsection (1) of this section, a request for special notice may not be made by a person, and any request for special notice previously made by a person becomes null and void, when:

(a) That person qualifies to request special notice solely by reason of being a specific legatee, all of the property that person is entitled to receive from the decedent's estate has been distributed to that person, and that person's bequest is not subject to any subsequent abatement for the payment of the decedent's debts, expenses, or taxes;

(b) That person qualifies to request special notice solely by reason of being an heir of the decedent, none of the

decedent's property is subject to the laws of descent and distribution, the decedent's will has been probated, and the time for contesting the probate of that will has expired; or

(c) That person qualifies to request special notice solely by reason of being a creditor of the decedent and that person has received all of the property that the person is entitled to receive from the decedent's estate. [1997 c 252 § 4; 1985 c 30 § 5. Prior: 1984 c 149 § 8; 1965 c 145 § 11.28.240; prior: 1941 c 206 § 1; 1939 c 132 § 1; 1917 c 156 § 64; Rem. Supp. 1941 § 1434.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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

Claim of personal representative—Presentation and petition—Filing: 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.

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.

Cancellation of letters of administration: RCW 11.28.160.

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

Notice to creditors when personal representative removed—Limit tolled by vacancy: RCW 11.40.150.

Revocation of letters

by discovery of will: RCW 11.28.150.

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

Successor personal representative: RCW 11.28.280.

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 or surrendered or upon disqualification. If more than one personal representative of an estate is serving when the letters to any of them are revoked or surrendered or when any part of them dies or in any way becomes disqualified, those who remain shall perform all the duties required by law unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise. [1997 c 252 § 5; 1965 c 145 § 11.28.270. Prior: 1917 c 156 § 76; RRS § 1446; prior: Code 1881 § 1427; 1854 p 273 § 38.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.28.280 Successor personal representative. Except as otherwise provided in RCW 11.28.270, if a personal representative of an estate dies or resigns or the letters are revoked before the settlement of the estate, letters testamentary or letters of administration of the estate remaining unadministered shall be granted to those to whom the letters would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the successor personal representative shall perform like duties and incur like liabilities as the preceding personal representative, unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise. A succeeding personal representative may petition for nonintervention powers under chapter 11.68 RCW. [1997 c 252 § 6; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 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 ex.s. c 117 § 31.]

Application, construction—Severability—Effective date—1974 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 or service 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 or on whom served, 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.

Any person paying, delivering, transferring, or issuing property to the person entitled thereto under an adjudication of testacy or intestacy and heirship that is deemed the equivalent of a final decree of distribution as set forth in this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent. [1988 c 29 § 1; 1977 ex.s. c 234 § 7; 1974 ex.s. c 117 § 32.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

Chapter 11.32

SPECIAL ADMINISTRATORS

Sections

11.32.010	Appointment.
11.32.020	Bond.
11.32.030	Powers and duties.
11.32.040	Succession by personal representative.
11.32.050	Not liable to creditors.
11.32.060	To render account.

11.32.010 Appointment. 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 11.28.185.

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.
11.36.021 Trustees—Who may serve.

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 persons 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: PROVIDED FURTHER, That professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys may act as personal representatives. No trust company or national bank may 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 may 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 may inure, directly or indirectly, to the benefit of any trust company or national bank. 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 the nonresident appoints 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 11.28.185, such nonresident personal representative shall file a bond to be approved by the court. [1983 c 51 § 1; 1983 c 3 § 14; 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.

Financial institutions 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.

11.36.021 Trustees—Who may serve. (1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys; and

(e) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of any felony or a misdemeanor involving moral turpitude; and

(b) A corporation organized under Title 23B RCW that is not authorized under the laws of the state of Washington to act as a fiduciary. [1991 c 72 § 1; 1985 c 30 § 6. Prior: 1984 c 149 § 9.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.40

CLAIMS AGAINST ESTATE

Sections

- 11.40.010 Claims—Presentation—Other notice not affected.
- 11.40.020 Notice to creditors—Manner—Filings—Publication.
- 11.40.030 Notice to creditors—Form.
- 11.40.040 "Reasonably ascertainable" creditor—Definition—
Reasonable diligence—Presumptions—Petition for order.
- 11.40.051 Claims against decedent—Time limits.
- 11.40.060 Claims involving liability or casualty insurance—
Limitations—Exceptions to time limits.
- 11.40.070 Claims—Form—Manner of presentation—Waiver of defects.
- 11.40.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees.
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Petition for extension—Ranking of claims—Barred claims
- 11.40.100 Rejection of claim—Time limits—Notice—Compromise of claim.
- 11.40.110 Action pending at decedent's death—Personal representative as defendant.
- 11.40.120 Effect of judgment against personal representative.
- 11.40.130 Judgment against decedent—Execution barred upon decedent's death—Presentation—Sale of property.
- 11.40.135 Secured claim—Creditor's right.
- 11.40.140 Claim of personal representative—Presentation and petition—Filing.
- 11.40.150 Notice to creditors when personal representative resigns, dies, or is removed—Limit tolled by vacancy.
- 11.40.160 Personal representative as successor to notice agent—Notice not affected—Presumptions—Duties.

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

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.

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.

Order maturing claim not due: RCW 11.76.180.

Order of payment of debts: RCW 11.76.110.

Payment of claims where estate insufficient: RCW 11.76.150.

Quasi-community property—Lifetime transfers—Claims by surviving spouse: RCW 26.16.240.

Sale, etc., of property—Priority as to realty or personalty: Chapter 11.10 RCW.

Survival of actions: Chapter 4.20 RCW.

Tax constitutes debt—Priority of lien: RCW 82.32.240.

11.40.010 Claims—Presentation—Other notice not affected. A person having a claim against the decedent may not maintain an action on the claim unless a personal representative has been appointed and the claimant has presented the claim as set forth in this chapter. However, this chapter does not affect the notice under RCW 82.32.240 or the ability to maintain an action against a notice agent under chapter 11.42 RCW. [1997 c 252 § 7; 1995 1st sp.s. c 18 § 58; 1994 c 221 § 25; 1991 c 5 § 1; 1989 c 333 § 1; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Application—Effective date—1989 c 333: "This act is necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1989]. This act shall apply to probate proceedings that are open on or are commenced after the effective date, except that section 5 of this act shall apply only to decedents dying after the effective date." [1989 c 333 § 9.] This act consists of the enactment of RCW 11.40.012, 11.40.013, 11.40.014, and 11.40.015, and the 1989 c 333 amendment of RCW 11.40.010, 11.40.011, 11.40.030, and 4.16.200. Section 5 of this act is RCW 11.40.014.

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

Publication of legal notices: Chapter 65.16 RCW.

11.40.020 Notice to creditors—Manner—Filings—Publication. A personal representative may give notice to the creditors of the decedent, as directed in RCW 11.40.030, announcing the personal representative's appointment and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.40.051 or be forever barred as to claims against the decedent's probate and nonprobate assets. If notice is given:

(1) The personal representative shall first file the original of the notice with the court;

(2) The personal representative shall then cause the notice to be published once each week for three successive weeks in a legal newspaper in the county in which the estate is being administered;

(3) The personal representative may, at any time during the probate proceeding, give actual notice to creditors who become known to the personal representative by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first class mail, postage prepaid; and

(4) The personal representative shall also mail a copy of the notice, including the decedent's social security number, to the state of Washington department of social and health services office of financial recovery.

The personal representative shall file with the court proof by affidavit of the giving and publication of the notice. [1997 c 252 § 8; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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

11.40.030 Notice to creditors—Form. Notice under RCW 11.40.020 must contain the following elements in substantially the following form:

CAPTION	)	No.
OF CASE	)	PROBATE NOTICE TO
	)	CREDITORS
.....	)	RCW 11.40.030

The personal representative named below has been appointed as personal representative of this estate. Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.40.070 by serving on or mailing to the personal representative or the personal representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the court. The claim must be presented within the later of: (1) Thirty days after the personal representative served or mailed the notice to the creditor as provided under RCW 11.40.020(3); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.40.051 and 11.40.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First Publication:

Personal Representative:

Attorney for the Personal Representative:
Address for Mailing or Service:

[1997 c 252 § 9; 1989 c 333 § 7; 1977 ex.s. c 234 § 8; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application—Effective date—1989 c 333: See note following RCW 11.40.010.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.40.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order. (1) For purposes of RCW 11.40.051, a "reasonably ascertainable" creditor of the decedent is one that the personal representative would discover upon exercise of reasonable diligence. The personal representative is

deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the personal representative.

(2) If the personal representative conducts the review, the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW 11.40.051. These presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) The personal representative may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The personal representative may petition the court for an order declaring that the personal representative has made a review and that any creditors not known to the personal representative are not reasonably ascertainable. The petition must be filed under RCW 11.96.070 and the notice specified under RCW 11.96.100 must also be given by publication. [1997 c 252 § 10; 1994 c 221 § 28; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

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

Order of payment of debts: RCW 11.76.110.

11.40.051 Claims against decedent—Time limits.

(1) Whether or not notice is provided under RCW 11.40.020, a person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent, if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations:

(a) If the personal representative provided notice under RCW 11.40.020 (1) and (2) and the creditor was given actual notice as provided in RCW 11.40.020(3), the creditor must present the claim within the later of: (i) Thirty days after the personal representative's service or mailing of notice to the creditor; and (ii) four months after the date of first publication of the notice;

(b) If the personal representative provided notice under RCW 11.40.020 (1) and (2) and the creditor was not given actual notice as provided in RCW 11.40.020(3):

(i) If the creditor was not reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within four months after the date of first publication of notice;

(ii) If the creditor was reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within twenty-four months after the decedent's date of death; and

(c) If notice was not provided under this chapter or chapter 11.42 RCW, the creditor must present the claim within twenty-four months after the decedent's date of death.

(2) An otherwise applicable statute of limitations applies without regard to the tolling provisions of RCW 4.16.190.

(3) This bar is effective as to claims against both the decedent's probate and nonprobate assets. [1997 c 252 § 11.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits. The time limitations for presenting claims under this chapter do not accrue to the benefit of any liability or casualty insurer. Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within the time limitation of RCW 11.40.051, but the amount of recovery cannot exceed the amount of the insurance. The claims may at any time be presented as provided in RCW 11.40.070, subject to the otherwise relevant statutes of limitations, and do not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate. This section does not serve to extend any otherwise relevant statutes of limitations. [1997 c 252 § 12; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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

11.40.070 Claims—Form—Manner of presentation—Waiver of defects. (1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

- (a) The name and address of the claimant;
- (b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;
- (c) A statement of the facts or circumstances constituting the basis of the claim;
- (d) The amount of the claim; and
- (e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim.

(2) A claim does not need to be supported by affidavit.

(3) A claim must be presented within the time limits set forth in RCW 11.40.051 by: (a) Serving on or mailing to, by regular first class mail, the personal representative or the personal representative's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court. A claim is deemed presented upon the later of the date of postmark or service on the personal representative, or the personal representative's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.40.051, the personal

representative may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid is the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle. [1997 c 252 § 13; 1965 c 145 § 11.40.070. Prior: 1917 c 156 § 113; RRS § 1483; prior: Code 1881 § 1473; 1854 p 281 § 85.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees. (1) The personal representative shall allow or reject all claims presented in the manner provided in RCW 11.40.070. The personal representative may allow or reject a claim in whole or in part.

(2) If the personal representative has not allowed or rejected a claim within the later of four months from the date of first publication of the notice to creditors or thirty days from presentation of the claim, the claimant may serve written notice on the personal representative that the claimant will petition the court to have the claim allowed. If the personal representative fails to notify the claimant of the allowance or rejection of the claim within twenty days after the personal representative's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court may allow the petitioner reasonable attorneys' fees chargeable against the estate. [1997 c 252 § 14; 1994 c 221 § 29; 1988 c 64 § 22; 1965 c 145 § 11.40.080. Prior: 1917 c 156 § 114; RRS § 1484; prior: Code 1881 § 1474; 1854 p 281 § 86.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

11.40.090 Allowance of claims—Notice—Automatic allowance—Petition for extension—Ranking of claims—Barred claims. (1) If the personal representative allows a claim, the personal representative shall notify the claimant of the allowance by personal service or regular first class mail to the address stated on the claim.

(2) A claim that on its face does not exceed one thousand dollars presented in the manner provided in RCW 11.40.070 must be deemed allowed and may not thereafter be rejected unless the personal representative has notified the claimant of rejection of the claim within the later of six months from the date of first publication of the notice to creditors and two months from the personal representative's receipt of the claim. The personal representative may petition for an order extending the period for automatic allowance of the claims.

(3) Allowed claims must be ranked among the acknowledged debts of the estate to be paid expeditiously in the course of administration.

(4) A claim may not be allowed if it is barred by a statute of limitations. [1997 c 252 § 15; 1965 c 145 §

11.40.090. Prior: 1917 c 156 § 115; RRS § 1485; prior: Code 1881 § 1475; 1854 p 281 § 87.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.100 Rejection of claim—Time limits—Notice—Compromise of claim. (1) If the personal representative rejects a claim, in whole or in part, the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

(2) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate. [1997 c 252 § 16; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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

11.40.110 Action pending at decedent's death—Personal representative as defendant. If an action is pending against the decedent at the time of the decedent's death, the plaintiff shall, within four months after appointment of the personal representative, serve on the personal representative a petition to have the personal representative substituted as defendant in the action. Upon hearing on the petition, the personal representative shall be substituted, unless, at or before the hearing, the claim of the plaintiff, together with costs, is allowed. [1997 c 252 § 17; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 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 a personal representative shall be only to establish the amount of the judgment as an allowed claim. [1997 c 252 § 18; 1965 c 145 § 11.40.120. Prior: 1917 c 156 § 118; RRS § 1488; prior: Code 1881 § 1478; 1854 p 282 § 90.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

(1998 Ed.)

11.40.130 Judgment against decedent—Execution barred upon decedent's death—Presentation—Sale of property. If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented in the manner provided in RCW 11.40.070, but if the judgment is a lien on any property of the decedent, the property may be sold for the satisfaction of the judgment and the officer making the sale shall account to the personal representative for any surplus. [1997 c 252 § 19; 1965 c 145 § 11.40.130. Prior: 1917 c 156 § 119; RRS § 1489; prior: Code 1881 § 1479; 1854 p 292 § 91.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.135 Secured claim—Creditor's right. If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in RCW 11.40.070. [1997 c 252 § 20.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.140 Claim of personal representative—Presentation and petition—Filing. If the personal representative has a claim against the decedent, the personal representative must present the claim in the manner provided in RCW 11.40.070 and petition the court for allowance or rejection. The petition must be filed under RCW 11.96.070. This section applies whether or not the personal representative is acting under nonintervention powers. [1997 c 252 § 21; 1965 c 145 § 11.40.140. Prior: 1917 c 156 § 120; RRS § 1490; prior: Code 1881 § 1482; 1854 p 283 § 94.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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

11.40.150 Notice to creditors when personal representative resigns, dies, or is removed—Limit tolled by vacancy. (1) If a personal representative has given notice under RCW 11.40.020 and then resigns, dies, or is removed, the successor personal representative shall:

(a) Publish notice of the vacancy and succession for two successive weeks in the legal newspaper in which notice was published under RCW 11.40.020 if the vacancy occurred within twenty-four months after the decedent's date of death; and

(b) Provide actual notice of the vacancy and succession to a creditor if: (i) The creditor filed a claim and the claim had not been accepted or rejected by the prior personal representative; or (ii) the creditor's claim was rejected and the vacancy occurred within thirty days after rejection of the claim.

(2) The time between the resignation, death, or removal and first publication of the vacancy and succession or, in the case of actual notice, the mailing of the notice of vacancy and succession must be added to the time within which a claim must be presented or a suit on a rejected claim must be filed. This section does not extend the twenty-four month

self-executing bar under RCW 11.40.051. [1997 c 252 § 22; 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.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.160 Personal representative as successor to notice agent—Notice not affected—Presumptions—Duties. If a notice agent had commenced nonprobate notice to creditors under chapter 11.42 RCW, the appointment of the personal representative does not affect the filing and publication of notice to creditors and does not affect actual notice to creditors given by the notice agent. The personal representative is presumed to have adopted or ratified all acts of the notice agent unless, within thirty days of appointment, the personal representative provides notice of rejection or nullification to the affected claimant or claimants by personal service or certified mail addressed to the claimant or claimant's agent, if applicable, at the address stated on the claim. The personal representative shall also provide notice under RCW 11.42.150. [1997 c 252 § 23.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Chapter 11.42

SETTLEMENT OF CREDITOR CLAIMS FOR ESTATES PASSING WITHOUT PROBATE

Sections

11.42.010	Notice agent—Qualifications.
11.42.020	Notice to creditors—Manner—Filings—Publication.
11.42.030	Notice to creditors—Form
11.42.040	"Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order.
11.42.050	Claims against decedent—Time limits.
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11.42.070	Claims—Form—Manner of presentation—Waiver of defects.
11.42.080	Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees.
11.42.085	Property liable for claims—Payment limits.
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11.42.110	Effect of judgment against notice agent.
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11.42.125	Secured claim—Creditor's right.
11.42.130	Claim of notice agent or beneficiary—Payment.
11.42.140	Notice to creditors when notice agent resigns, dies, or is removed—Limit tolled by vacancy.
11.42.150	Appointment of personal representative—Cessation of notice agent powers and authority—Notice not affected—Personal representative's powers—Petition for reimbursement for allowance and payment of claims by notice agent.

11.42.010 Notice agent—Qualifications. (1) Subject to the conditions stated in this chapter, and if no personal representative has been appointed in this state, a beneficiary or trustee who has received or is entitled to receive by reason of the decedent's death substantially all of the decedent's probate and nonprobate assets, is qualified to give nonprobate notice to creditors under this chapter.

If no one beneficiary or trustee has received or is entitled to receive substantially all of the assets, then those persons, who in the aggregate have received or are entitled to receive substantially all of the assets, may, under an agreement under RCW 11.96.170, appoint a person who is then qualified to give nonprobate notice to creditors under this chapter.

(2) A person or group of persons is deemed to have received substantially all of the decedent's probate and nonprobate assets if the person or the group, at the time of the filing of the declaration and oath referred to in subsection (3) of this section, in reasonable good faith believed that the person or the group had received, or was entitled to receive by reason of the decedent's death, substantially all of the decedent's probate and nonprobate assets.

(3)(a) The "notice agent" means the qualified person who:

(i) Pays a filing fee to the clerk of the superior court in a county in which probate may be commenced regarding the decedent, the "notice county", and receives a cause number; and

(ii) Files a declaration and oath with the clerk.

(b) The declaration and oath must be made in affidavit form or under penalty of perjury and must state that the person making the declaration believes in reasonable good faith that the person is qualified under this chapter to act as the notice agent and that the person will faithfully execute the duties of the notice agent as provided in this chapter.

(4) The following persons are not qualified to act as notice agent:

(a) Corporations, trust companies, and national banks, except: (i) Such entities as are authorized to do trust business in this state; and (ii) professional service corporations that are regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys;

(b) Minors;

(c) Persons of unsound mind;

(d) Persons who have been convicted of a felony or of a misdemeanor involving moral turpitude; and

(e) Persons who have given notice under this chapter and who thereafter become of unsound mind or are convicted of a felony or misdemeanor involving moral turpitude. This disqualification does not bar another person, otherwise qualified, from acting as successor notice agent.

(5) A nonresident may act as notice agent if the nonresident appoints an agent who is a resident of the notice county or who is attorney of record for the notice agent upon whom service of all papers may be made. The appointment must be made in writing and filed with the court. [1997 c 252 § 24; 1994 c 221 § 31.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.020 Notice to creditors—Manner—Filings—Publication. (1) The notice agent may give nonprobate notice to the creditors of the decedent if:

(a) As of the date of the filing of the notice to creditors with the court, the notice agent has no knowledge of another person acting as notice agent or of the appointment of a

personal representative in the decedent's estate in the state of Washington; and

(b) According to the records of the court as are available on the date of the filing of the notice to creditors, no cause number regarding the decedent has been issued to any other notice agent and no personal representative of the decedent's estate had been appointed.

(2) The notice agent must give notice to the creditors of the decedent, as directed in RCW 11.42.030, announcing that the notice agent has elected to give nonprobate notice to creditors and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.42.050 or be forever barred as to claims against the decedent's probate and nonprobate assets.

(a) The notice agent shall first file the original of the notice with the court.

(b) The notice agent shall then cause the notice to be published once each week for three successive weeks in a legal newspaper in the notice county.

(c) The notice agent may at any time give actual notice to creditors who become known to the notice agent by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first class mail, postage prepaid.

(d) The notice agent shall also mail a copy of the notice, including the decedent's social security number, to the state of Washington department of social and health services' office of financial recovery.

The notice agent shall file with the court proof by affidavit of the giving and publication of the notice. [1997 c 252 § 25; 1995 1st sp.s. c 18 § 59; 1994 c 221 § 32.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.030 Notice to creditors—Form. Notice under RCW 11.42.020 must contain the following elements in substantially the following form:

CAPTION)
OF CASE) No.
) NONPROBATE
) NOTICE TO CREDITORS
) RCW 11.42.030
.....)

The notice agent named below has elected to give notice to creditors of the above-named decedent. As of the date of the filing of a copy of this notice with the court, the notice agent has no knowledge of any other person acting as notice agent or of the appointment of a personal representative of the decedent's estate in the state of Washington. According to the records of the court as are available on the date of the filing of this notice with the court, a cause number regarding the decedent has not been issued to any other notice agent and a personal representative of the decedent's estate has not been appointed.

Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.42.070 by serving on or

mailing to the notice agent or the notice agent's attorney at the address stated below a copy of the claim and filing the original of the claim with the court. The claim must be presented within the later of: (1) Thirty days after the notice agent served or mailed the notice to the creditor as provided under RCW 11.42.020(2)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.42.050 and 11.42.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First Publication:

The notice agent declares under penalty of perjury under the laws of the state of Washington on [year], at [city], [state] that the foregoing is true and correct.

Signature of Notice Agent

Notice Agent:

Attorney for the Notice Agent:
Address for Mailing or Service:

[1997 c 252 § 26; 1994 c 221 § 33.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order. (1) For purposes of RCW 11.42.050, a "reasonably ascertainable" creditor of the decedent is one that the notice agent would discover upon exercise of reasonable diligence. The notice agent is deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the notice agent.

(2) If the notice agent conducts the review, the notice agent is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW 11.42.050. These presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) The notice agent may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The notice agent may petition the court for an order declaring that the notice agent has made a review and that any creditors not known to the notice agent are not reasonably ascertainable. The petition must be filed under RCW 11.96.070, and the notice specified under RCW 11.96.100 must also be given by publication. [1997 c 252 § 27; 1994 c 221 § 34.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.050 Claims against decedent—Time limits.

(1) If a notice agent provides notice under RCW 11.42.020, any person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.42.070 within the following time limitations:

(a) If the notice agent provided notice under RCW 11.42.020(2) (a) and (b) and the creditor was given actual notice as provided in RCW 11.42.020(2)(c), the creditor must present the claim within the later of: (i) Thirty days after the notice agent's service or mailing of notice to the creditor; and (ii) four months after the date of first publication of the notice;

(b) If the notice agent provided notice under RCW 11.42.020(2) (a) and (b) and the creditor was not given actual notice as provided in RCW 11.42.020(2)(c):

(i) If the creditor was not reasonably ascertainable, as defined in RCW 11.42.040, the creditor must present the claim within four months after the date of first publication of the notice;

(ii) If the creditor was reasonably ascertainable, as defined in RCW 11.42.040, the creditor must present the claim within twenty-four months after the decedent's date of death.

(2) Any otherwise applicable statute of limitations applies without regard to the tolling provisions of RCW 4.16.190.

(3) This bar is effective as to claims against both the decedent's probate and nonprobate assets. [1997 c 252 § 28; 1994 c 221 § 35.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits. The time limitations for presenting claims under this chapter do not accrue to the benefit of any liability or casualty insurer. Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within the time limitation of RCW 11.42.050, but the amount of recovery cannot exceed the amount of the insurance. If a notice agent provides notice under RCW 11.42.020, the claims may at any time be presented as provided in RCW 11.42.070, subject to the otherwise relevant statutes of limitations, and does not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the transfer or distribution of the decedent's assets. This section does not serve to extend any otherwise relevant statutes of limitations. [1997 c 252 § 29; 1994 c 221 § 36.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.070 Claims—Form—Manner of presentation—Waiver of defects. (1) The claimant, the claimant's

attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

(a) The name and address of the claimant;

(b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;

(c) A statement of the facts or circumstances constituting the basis of the claim;

(d) The amount of the claim; and

(e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim.

(2) A claim does not need to be supported by affidavit.

(3) A claim must be presented within the time limits set forth in RCW 11.42.050 by: (a) Serving on or mailing to, by regular first class mail, the notice agent or the notice agent's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court. A claim is deemed presented upon the later of the date of postmark or service on the notice agent, or the notice agent's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.42.050, the notice agent may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid was the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle. [1997 c 252 § 30; 1994 c 221 § 37.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees. (1) The notice agent shall allow or reject all claims presented in the manner provided in RCW 11.42.070. The notice agent may allow or reject a claim, in whole or in part.

(2) If the notice agent has not allowed or rejected a claim within the later of four months from the date of first publication of the notice to creditors and thirty days from presentation of the claim, the claimant may serve written notice on the notice agent that the claimant will petition the court to have the claim allowed. If the notice agent fails to notify the claimant of the allowance or rejection of the claim within twenty days after the notice agent's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court may allow the petitioner reasonable attorneys' fees chargeable against the decedent's assets received by the notice agent or by those appointing the notice agent. [1997 c 252 § 31; 1994 c 221 § 38.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.085 Property liable for claims—Payment limits. (1) The decedent's nonprobate and probate assets that were subject to the satisfaction of the decedent's general liabilities immediately before the decedent's death are liable for claims. The decedent's probate assets may be liable, whether or not there is a probate administration of the decedent's estate.

(2) The notice agent may pay a claim allowed by the notice agent or a judgment on a claim first prosecuted against a notice agent only out of assets received as a result of the death of the decedent by the notice agent or by those appointing the notice agent, except as may be provided by agreement under RCW 11.96.170 or by court order under RCW 11.96.070. [1997 c 252 § 32.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.42.090 Allowance of claims—Notice—Payment order. (1) If the notice agent allows a claim, the notice agent shall notify the claimant of the allowance by personal service or regular first class mail to the address stated on the claim. A claim may not be allowed if it is barred by a statute of limitations.

(2) The notice agent shall pay claims allowed in the following order from the assets of the decedent that are subject to the payment of claims as provided in RCW 11.42.085:

(a) Costs of administering the assets subject to the payment of claims, including a reasonable fee to the notice agent, any resident agent for the notice agent, reasonable attorneys' fees for the attorney for each of them, filing fees, publication costs, mailing costs, and similar costs and fees;

(b) Funeral expenses in a reasonable amount;

(c) Expenses of the last sickness in a reasonable amount;

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

(e) Debts having preference by the laws of the United States;

(f) Taxes, debts, or dues owing to the state;

(g) Judgments rendered against the decedent in the decedent's lifetime that are liens upon real estate on which executions might have been issued at the time of the death of the decedent and debts secured by mortgages in the order of their priority; and

(h) All other demands against the assets subject to the payment of claims.

(3) The notice agent may not pay a claim of the notice agent or other person who has received property by reason of the decedent's death unless all other claims that have been filed under this chapter, and all debts having priority to the claim, are paid in full or otherwise settled by agreement, regardless of whether the other claims are allowed or rejected. [1997 c 252 § 33; 1994 c 221 § 39.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.100 Rejection of claim—Time limits—Notice—Time limit for suit—Compromise of claim. (1) If the notice agent rejects a claim, in whole or in part, the

claimant must bring suit against the notice agent within thirty days after notification of rejection or the claim is forever barred. The notice agent shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The notice agent shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the proper court against the notice agent within thirty days after notification of rejection or the claim will be forever barred.

(2) If a claimant brings suit against the notice agent on a rejected claim and the notice agent has not received substantially all assets of the decedent that are liable for claims, the notice agent may only make an appearance in the action and may not answer the action but must cause a petition to be filed for the appointment of a personal representative within thirty days after service of the creditor's action on the notice agent. Under these circumstances, a judgment may not be entered in an action brought by a creditor against the notice agent earlier than twenty days after the personal representative has been substituted in that action for the notice agent.

(3) The notice agent may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated. [1997 c 252 § 34; 1994 c 221 § 40.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.110 Effect of judgment against notice agent. The effect of a judgment rendered against the notice agent shall be only to establish the amount of the judgment as an allowed claim. [1997 c 252 § 35; 1994 c 221 § 41.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.120 Execution barred upon decedent's death—Presentation—Sale of property. If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. If a notice agent is acting, the judgment must be presented in the manner provided in RCW 11.42.070, but if the judgment is a lien on any property of the decedent, the property may be sold for the satisfaction of the judgment and the officer making the sale shall account to the notice agent for any surplus. [1997 c 252 § 36; 1994 c 221 § 42.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.125 Secured claim—Creditor's right. If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of the creditor to realize on the creditor's security, whether or not the creditor pre-

sented the claim in the manner provided in RCW 11.42.070. [1997 c 252 § 37.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.42.130 Claim of notice agent or beneficiary—Payment. A claim of the notice agent or other person who has received property by reason of the decedent's death must be paid as set forth in RCW 11.42.090(3). [1997 c 252 § 38; 1994 c 221 § 43.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.140 Notice to creditors when notice agent resigns, dies, or is removed—Limit tolled by vacancy. (1) If a notice agent has given notice under RCW 11.42.020 and the notice agent resigns, dies, or is removed or a personal representative is appointed, the successor notice agent or the personal representative shall:

(a) Publish notice of the vacancy and succession for two successive weeks in the legal newspaper in which notice was published under RCW 11.42.020, if the vacancy occurred within twenty-four months after the decedent's date of death; and

(b) Provide actual notice of the vacancy and succession to a creditor if: (i) The creditor filed a claim and the claim had not been allowed or rejected by the prior notice agent; or (ii) the creditor's claim was rejected and the vacancy occurred within thirty days after rejection of the claim.

(2) The time between the resignation, death, or removal of the notice agent or appointment of a personal representative and the first publication of the vacancy and succession or, in the case of actual notice, the mailing of the notice of vacancy and succession must be added to the time within which a claim must be presented or a suit on a rejected claim must be filed. This section does not extend the twenty-four-month self-executing bar under RCW 11.42.050. [1997 c 252 § 39; 1994 c 221 § 45.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

11.42.150 Appointment of personal representative—Cessation of notice agent powers and authority—Notice not affected—Personal representative's powers—Petition for reimbursement for allowance and payment of claims by notice agent. (1) The powers and authority of a notice agent immediately cease, and the office of notice agent becomes vacant, upon appointment of a personal representative for the estate of the decedent. Except as provided in RCW 11.42.140(2), the cessation of the powers and authority does not affect the filing and publication of notice to creditors and does not affect actual notice to creditors given by the notice agent.

(2) As set forth in RCW 11.40.160, a personal representative may adopt, ratify, nullify, or reject any actions of the notice agent.

(3) If a personal representative is appointed and the personal representative does not nullify the allowance of a claim that the notice agent allowed and paid, the person or

persons whose assets were used to pay the claim may petition for reimbursement from the estate to the extent the payment was not in accordance with chapter 11.10 RCW. [1997 c 252 § 40; 1994 c 221 § 44.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Chapter 11.44

INVENTORY AND APPRAISEMENT

Sections

- 11.44.015 Inventory and appraisal—Filing—Copy distribution.
- 11.44.025 Additional inventory and appraisal—Copy distribution.
- 11.44.035 Inventory and appraisal may be contradicted or avoided.
- 11.44.050 Inventory and appraisal—Failure to return or provide copy—Revocation of letters.
- 11.44.070 Persons assisting in appraisal—Compensation—Refund.
- 11.44.085 Claims against personal representative included.
- 11.44.090 Discharge of debt—Specific bequest and inclusion in inventory and appraisal.

Partnerships, inventory and appraisal: RCW 11.64.002.

11.44.015 Inventory and appraisal—Filing—Copy distribution. (1) Within three months after appointment, unless a longer time shall be granted by the court, every personal representative shall make and verify by affidavit a true inventory and appraisal of all of the property of the estate passing under the will or by laws of intestacy and which shall have come to the personal representative's possession or knowledge, including a statement of all encumbrances, liens, or other secured charges against any item. 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 on the item. Such property shall be classified as follows:

- (a) Real property, by legal description;
- (b) Stocks and bonds;
- (c) Mortgages, notes, and other written evidences of debt;
- (d) Bank accounts and money;
- (e) Furniture and household goods;
- (f) 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.

(2) The inventory and appraisal may, but need not be, filed in the probate cause, but upon receipt of a written request for a copy of the inventory and appraisal from any heir, legatee, devisee, unpaid creditor who has filed a claim, or beneficiary of a nonprobate asset from whom contribution is sought under RCW 11.18.200, or from the department of revenue, the personal representative shall furnish to the person, within ten days of receipt of a request, a true and correct copy of the inventory and appraisal. [1997 c 252 § 41; 1967 c 168 § 9; 1965 c 145 § 11.44.015. Formerly RCW 11.44.010, part and 11.44.020, part.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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

11.44.025 Additional inventory and appraisal—Copy distribution. Whenever any property of the estate not mentioned in the inventory and appraisal comes to the knowledge of a personal representative, the personal representative shall cause the property to be inventoried and appraised and shall make and verify by affidavit a true inventory and appraisal of the property within thirty days after the discovery thereof, unless a longer time shall be granted by the court, and shall provide a copy of the inventory and appraisal to every person who has properly requested a copy of the inventory and appraisal under RCW 11.44.015(2). [1997 c 252 § 42; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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

11.44.035 Inventory and appraisal may be contradicted or avoided. In an action against the personal representative where the administration of the estate, or any part thereof, is put in issue and the inventory and appraisal of the estate by the personal representative is given in evidence, the same may be contradicted or avoided by evidence. Any party in interest in the estate may challenge the inventory and appraisal at any stage of the probate proceedings. [1997 c 252 § 43; 1965 c 145 § 11.44.035. Prior: Code 1881 § 721; 1877 p 146 § 725; 1869 p 166 § 662; RCW 11.48.170; RRS § 970.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.44.050 Inventory and appraisal—Failure to return or provide copy—Revocation of letters. If any personal representative shall neglect or refuse to make the inventory and appraisal within the period prescribed, or within such further time as the court may allow, or to provide a copy as provided under RCW 11.44.015, 11.44.025, or 11.44.035, the court may revoke the letters testamentary or of administration; and the personal representative shall be liable on his or her bond to any party interested for the injury sustained by the estate through his or her neglect. [1997 c 252 § 44; 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.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.44.070 Persons assisting in appraisal—Compensation—Refund. The personal representative may employ a qualified and disinterested person to assist 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 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

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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. [1997 c 252 § 45; 1974 ex.s. c 117 § 50; 1967 c 168 § 10; 1965 c 145 § 11.44.070. Formerly RCW 11.44.010, part.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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

Effective date—1965 c 145: See RCW 11.99.010.

11.44.085 Claims against personal representative 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 appraisal and the personal representative shall be liable to the same extent as the personal representative would have been had he or she not been appointed personal representative. [1997 c 252 § 46; 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.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.44.090 Discharge of debt—Specific bequest and inclusion in inventory and appraisal. The discharge or bequest in a will of any debt or demand of the testator against any executor named in the testator's 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 appraisal, and shall, if necessary, be applied in payment of the testator's debts; if not necessary for that purpose, it shall be paid in the same manner and proportions as other specific legacies. [1997 c 252 § 47; 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.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Chapter 11.48

PERSONAL REPRESENTATIVES—GENERAL PROVISIONS—ACTIONS BY AND AGAINST

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11.48.010 General powers and duties. It shall be the duty of every personal representative to settle the estate, including the administration of any nonprobate assets within control of the personal representative under RCW 11.18.200, in his or her hands as rapidly and as quickly as possible, without sacrifice to the probate or nonprobate estate. The personal representative shall collect all debts due the deceased and pay all debts as hereinafter provided. The personal representative shall be authorized in his or her 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. [1994 c 221 § 30; 1965 c 145 § 11.48.010. Prior: 1917 c 156 § 147; RRS § 1517; prior: Code 1881 § 1528; 1854 p 291 § 141.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

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 tenantable 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—Prohibitions: 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 9A.56.100.

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 9A.56.100.

11.48.080 Uncollectible debts—Liability—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—Prohibitions: 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 may authorize the personal representative, without the necessary nonintervention powers, to compromise and compound any claim owing the estate. Unless the court has restricted the power to compromise or compound claims owing to the estate, a personal representative with nonintervention powers may compromise and compound a claim owing the estate without the intervention of the court. [1997 c 252 § 58; 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.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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 fees. 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 11.54

FAMILY SUPPORT AND POSTDEATH CREDITOR'S CLAIM EXEMPTIONS

Sections

- 11.54.010 Award to surviving spouse or children—Petition.
- 11.54.020 Amount of basic award.
- 11.54.030 Conditions to award.
- 11.54.040 Increase in amount of award—Factors for consideration.
- 11.54.050 Decrease in amount of award—Factors for consideration.
- 11.54.060 Priority of awarded property—Effect of purchase or encumbrance on property.
- 11.54.070 Immunity of award from debts and claims of creditors.
- 11.54.080 Exemption of additional assets from claims of creditors—Petition—Notice—Court order.
- 11.54.090 Venue for petition—Petition and hearing requirements—Notice of hearing.
- 11.54.100 Exhaustion of estate—Closure of estate—Discharge of personal representative.

11.54.010 Award to surviving spouse or children—Petition. (1) Subject to RCW 11.54.030, the surviving spouse of a decedent may petition the court for an award from the property of the decedent. If the decedent is survived by children of the decedent who are not also the children of the surviving spouse, on petition of such a child the court may divide the award between the surviving spouse and all or any of such children as it deems appropriate. If there is not a surviving spouse, the minor children of the decedent may petition for an award.

(2) The award may be made from either the community property or separate property of the decedent. Unless otherwise ordered by the court, the probate and nonprobate assets of the decedent abate in accordance with chapter 11.10 RCW in satisfaction of the award.

(3) The award may be made whether or not probate proceedings have been commenced in the state of Washing-

ton. The court may not make this award unless the petition for the award is filed before the earliest of:

(a) Eighteen months from the date of the decedent's death if within twelve months of the decedent's death either:

- (i) A personal representative has been appointed; or
- (ii) A notice agent has filed a declaration and oath as required in RCW 11.42.010(3)(a)(ii); or

(b) The termination of any probate proceeding for the decedent's estate that has been commenced in the state of Washington; or

(c) Six years from the date of the death of the decedent. [1997 c 252 § 48.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.54.020 Amount of basic award. The amount of the basic award shall be the amount specified in RCW 6.13.030(2) with regard to lands. If an award is divided between a surviving spouse and the decedent's children who are not the children of the surviving spouse, the aggregate amount awarded to all the claimants under this section shall be the amount specified in RCW 6.13.030(2) with respect to lands. The amount of the basic award may be increased or decreased in accordance with RCW 11.54.040 and 11.54.050. [1997 c 252 § 49.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.54.030 Conditions to award. (1) The court may not make an award unless the court finds that the funeral expenses, expenses of last sickness, and expenses of administration have been paid or provided for.

(2) The court may not make an award to a surviving spouse or child who has participated, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent. [1997 c 252 § 50.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.54.040 Increase in amount of award—Factors for consideration. (1) If it is demonstrated to the satisfaction of the court with clear, cogent, and convincing evidence that a claimant's present and reasonably anticipated future needs during the pendency of any probate proceedings in the state of Washington with respect to basic maintenance and support will not otherwise be provided for from other resources, and that the award would not be inconsistent with the decedent's intentions, the amount of the award may be increased in an amount the court determines to be appropriate.

(2) In determining the needs of the claimant, the court shall consider, without limitation, the resources available to the claimant and the claimant's dependents, and the resources reasonably expected to be available to the claimant and the claimant's dependents during the pendency of the probate, including income related to present or future employment and benefits flowing from the decedent's probate and nonprobate estate.

(3) In determining the intentions of the decedent, the court shall consider, without limitation:

(a) Provisions made for the claimant by the decedent under the terms of the decedent's will or otherwise;

(b) Provisions made for third parties or other entities under the decedent's will or otherwise that would be affected by an increased award;

(c) If the claimant is the surviving spouse, the duration and status of the marriage of the decedent to the claimant at the time of the decedent's death;

(d) The effect of any award on the availability of any other resources or benefits to the claimant;

(e) The size and nature of the decedent's estate; and

(f) Oral or written statements made by the decedent that are otherwise admissible as evidence.

The fact that the decedent has named beneficiaries other than the claimant as recipients of the decedent's estate is not of itself adequate to evidence such an intent as would prevent the award of an amount in excess of that provided for in RCW 6.13.030(2) with respect to lands.

(4)(a) A petition for an increased award may only be made if a petition for an award has been granted under RCW 11.54.010. The request for an increased award may be made in conjunction with the petition for an award under RCW 11.54.010.

(b) Subject to (a) of this subsection, a request for an increased award may be made at any time during the pendency of the probate proceedings. A request to modify an increased award may also be made at any time during the pendency of the probate proceedings by a person having an interest in the decedent's estate that will be directly affected by the requested modification. [1997 c 252 § 51.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.54.050 Decrease in amount of award—Factors for consideration. (1) The court may decrease the amount of the award below the amount provided in RCW 11.54.020 in the exercise of its discretion if the recipient is entitled to receive probate or nonprobate property, including insurance, by reason of the death of the decedent. In such a case the award must be decreased by no more than the value of such other property as is received by reason of the death of the decedent. The court shall consider the factors presented in RCW 11.54.040(2) in determining the propriety of the award and the proper amount of the award, if any.

(2) An award to a surviving spouse is also discretionary and the amount otherwise allowable may be reduced if: (a) The decedent is survived by children who are not the children of the surviving spouse and the award would decrease amounts otherwise distributable to such children; or (b) the award would have the effect of reducing amounts otherwise distributable to any of the decedent's minor children. In either case the court shall consider the factors presented in RCW 11.54.040 (2) and (3) and whether the needs of the minor children with respect to basic maintenance and support are and will be adequately provided for, both during and after the pendency of any probate proceedings if such proceedings are pending, considering support from any source, including support from the surviving spouse. [1997 c 252 § 52.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.54.060 Priority of awarded property—Effect of purchase or encumbrance on property. (1) The award has priority over all other claims made in the estate. In determining which assets must be made available to satisfy the award, the claimant is to be treated as a general creditor of the estate, and unless otherwise ordered by the court the assets shall abate in satisfaction of the award in accordance with chapter 11.10 RCW.

(2) If the property awarded is being purchased on contract or is subject to any encumbrance, for purposes of the award the property must be valued net of the balance due on the contract and the amount of the encumbrance. The property awarded will continue to be subject to any such contract or encumbrance, and any award in excess of the basic award under RCW 11.54.010, whether of community property or the decedent's separate property, is not immune from any lien for costs of medical expenses recoverable under RCW 43.20B.080. [1997 c 252 § 53.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.54.070 Immunity of award from debts and claims of creditors. (1) Except as provided in RCW 11.54.060(2), property awarded and cash paid under this chapter is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse existing at the time of death.

(2) Both the decedent's and the surviving spouse's interests in any community property awarded to the spouse under this chapter are immune from the claims of creditors. [1998 c 292 § 201; 1997 c 252 § 54.]

Retroactive application—1998 c 292: "(1) Sections 201 through 205 of this act are remedial in nature and apply retroactively to July 27, 1997, and thereafter.

(2) Section 301 of this act is remedial in nature and applies retroactively to July 1, 1991, and thereafter." [1998 c 292 § 604.]

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.54.080 Exemption of additional assets from claims of creditors—Petition—Notice—Court order. (1) This section applies if the party entitled to petition for an award holds exempt property that is in an aggregate amount less than that specified in RCW 6.13.030(2) with respect to lands.

(2) For purposes of this section, the party entitled to petition for an award is referred to as the "claimant." If multiple parties are entitled to petition for an award, all of them are deemed a "claimant" and may petition for an exemption of additional assets as provided in this section, if the aggregate amount of exempt property to be held by all the claimants after the making of the award does not exceed the amount specified in RCW 6.13.030(2) with respect to lands.

(3) A claimant may petition the court for an order exempting other assets from the claims of creditors so that the aggregate amount of exempt property held by the claimants equals the amount specified in RCW 6.13.030(2) with respect to lands. The petition must:

(a) Set forth facts to establish that the petitioner is entitled to petition for an award under RCW 11.54.010;

(b) State the nature and value of those assets then held by all claimants that are exempt from the claims of creditors; and

(c) Describe the nonexempt assets then held by the claimants, including any interest the claimants may have in any probate or nonprobate property of the decedent.

(4) Notice of a petition for an order exempting assets from the claims of creditors must be given in accordance with RCW 11.96.100.

(5) At the hearing on the petition, the court shall order that certain assets of the claimants are exempt from the claims of creditors so that the aggregate amount of exempt property held by the claimants after the entry of the order is in the amount specified in RCW 6.13.030(2) with respect to lands. In the order the court shall designate those assets of the claimants that are so exempt. [1997 c 252 § 55.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.54.090 Venue for petition—Petition and hearing requirements—Notice of hearing. The petition for an award, for an increased or modified award, or for the exemption of assets from the claims of creditors as authorized by this chapter must be made to the court of the county in which the probate is being administered. If probate proceedings have not been commenced in the state of Washington, the petition must be made to the court of a county in which the decedent's estate could be administered under RCW 11.96.050 if the decedent held personal property subject to probate in the county of the decedent's domicile. The petition and the hearing must conform to RCW 11.96.070. Notice of the hearing on the petition must be given in accordance with RCW 11.96.100. [1997 c 252 § 56.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.54.100 Exhaustion of estate—Closure of estate—Discharge of personal representative. If an award provided by this chapter will exhaust the estate, and probate proceedings have been commenced in the state of Washington, the court in the order of award or allowance shall order the estate closed, discharge the personal representative, and exonerate the personal representative's bond, if any. [1997 c 252 § 57.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Chapter 11.56

SALES, EXCHANGES, LEASES, MORTGAGES, AND BORROWING

Sections

11.56.005	Authority to exchange.
11.56.010	Authority to sell, lease or mortgage.
11.56.020	Sale, lease or mortgage of personal property.
11.56.030	Sale, lease or mortgage of real estate—Petition—Notice—Hearing.
11.56.040	Order directing mortgage.
11.56.045	Order directing lease.
11.56.050	Order directing sale.

- 11.56.060 Public sales—Notice.
- 11.56.070 Postponement, adjournment of sale—Notice.
- 11.56.080 Private sales of realty—Notice—Bids.
- 11.56.090 Minimum price—Private sale—Sale by negotiation—
Reappraisal.
- 11.56.100 Confirmation of sale—Approval—Resale.
- 11.56.110 Offer of increased bid—Duty of court.
- 11.56.115 Effect of confirmation.
- 11.56.120 Conveyance after confirmation of sale.
- 11.56.180 Sale of decedent's contract interest in land.
- 11.56.210 Assignment of decedent's contract.
- 11.56.220 Redemption of decedent's mortgaged estate.
- 11.56.230 Sale or mortgage to effect redemption.
- 11.56.240 Sale of mortgaged property if redemption inexpedient.
- 11.56.250 Sales directed by will.
- 11.56.265 Broker's fee and closing expenses—Sale, mortgage or lease.
- 11.56.280 Borrowing on general credit of estate—Petition—Notice—
Hearing.

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 of proceedings in probate—Prohibitions: RCW 11.28.240.

Sale of property to pay estate and transfer taxes: RCW 83.100.110.

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.]

11.56.020 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.]

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.

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, estate taxes, 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. [1990 c 180 § 2; 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. 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. [1994 c 221 § 49; 1965 c 145 § 11.56.050. Prior: 1917 c 156 § 126; RRS § 1496; prior: Code 1881 § 1494; 1854 p 285 § 104.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Abatement of assets: Chapter 11.10 RCW.

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. [1967 ex.s. c 106 § 2; 1967 c 168 § 18; 1965 c 145 § 11.56.110. Prior: 1955 c 154 § 1; 1917 c 156 § 132; RRS § 1502.]

Effective date—1967 ex.s. c 106: "The provisions of this act shall take effect on July 1, 1967." [1967 ex.s. c 106 § 5.]

Effective date—1967 c 168: 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.]

11.56.180 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 Broker's 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, or estate taxes, 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. [1990 c 180 § 3; 1965 c 145 § 11.56.280.]

Order of payment of debts: RCW 11.76.110.

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 1969 c 70 § 5.

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 1969 c 70 § 5.

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 \$60,000—DISPOSITION OF PROPERTY

Sections

- 11.62.005 Definitions.
- 11.62.010 Disposition of personal property, debts by affidavit, proof of death—Contents of affidavit—Procedure—Securities.
- 11.62.020 Effect of affidavit and proof of death—Discharge and release of transferor—Refusal to pay or deliver—Procedure—False affidavit—Conflicting affidavits—Accountability.
- 11.62.030 Payment to surviving spouse of moneys on deposit of deceased credit union member—Limitation—Affidavit—Accounting to personal representative.

Reviser's note: Inheritance and gift taxes were repealed by 1981 2nd ex.s. c 7 § 83.100.160. For provisions relating to estate and transfer taxes, see chapter 83.100 RCW.

11.62.005 Definitions. As used in this chapter, the following terms shall have the meanings indicated.

(1) "Personal property" shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.

(2)(a) "Successor" and "successors" shall mean (subject to subsection (2)(b) of this section):

(i) That person or those persons who are entitled to the claimed property pursuant to the terms and provisions of the last will and testament of the decedent or by virtue of the laws of intestate succession contained in this title; and/or

(ii) The surviving spouse of the decedent to the extent that the surviving spouse is entitled to the property claimed as his or her undivided one-half interest in the community property of said spouse and the decedent; and/or

(iii) The department of social and health services, to the extent of funds expended or paid, in the case of claims provided under RCW 43.20B.080; and/or

(iv) This state, in the case of escheat property.

(b) Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate, except for the state as set forth in (a)(iii) and (iv) of this subsection, shall be excluded from the definition of "successor".

(3) "Person" shall mean any individual or organization.

(4) "Organization" shall include a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. [1994 c 21 § 1; 1988 c 64 § 24; 1977 ex.s. c 234 § 29.]

Conflict with federal requirements—Effective date—1994 c 21: See notes following RCW 43.20B.080.

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.

11.62.010 Disposition of personal property, debts by affidavit, proof of death—Contents of affidavit—Procedure—Securities. (1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his or her death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed sixty 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) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

(4) No release from any Washington state or local taxing authority may be required before any assets or debts are paid or delivered to a successor of a decedent as required under this section.

(5) A copy of the affidavit, including the decedent's social security number, shall be mailed to the state of Washington, department of social and health services, office of financial recovery. [1995 1st sp.s. c 18 § 60; 1993 c 291 § 1. Prior: 1988 c 64 § 25; 1988 c 29 § 2; 1987 c 157 § 1; 1977 ex.s. c 234 § 11; 1974 ex.s. c 117 § 4.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.62.020 Effect of affidavit and proof of death—Discharge and release of transferor—Refusal to pay or deliver—Procedure—False affidavit—Conflicting affidavits—Accountability. The person paying, delivering, transferring, or issuing personal property pursuant to RCW 11.62.010 is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance, such person had actual knowledge of the falsity of any statement which is required by RCW 11.62.010(2) as now or hereafter amended to be contained in the successor's affidavit. Such person is not required to see to the application of the personal property, or to inquire into the truth of any matter specified in RCW 11.62.010 (1) or (2), or into the payment of any estate tax liability.

An organization shall not be deemed to have actual knowledge of the falsity of any statement contained in an affidavit made pursuant to RCW 11.62.010(2) as now or hereafter amended until such time as said knowledge shall have been brought to the personal attention of the individual making the transfer, delivery, payment, or issuance of the personal property claimed under RCW 11.62.010 as now or hereafter amended.

If any person to whom an affidavit and proof of death is delivered refuses to pay, deliver, or transfer any personal property, 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 an affidavit is delivered may pay, deliver, transfer, or issue any personal property in response to the first affidavit received, provided that proof of death has also been received, or alternately implead such property into court for payment over to the person entitled thereto. Any person to whom payment, delivery, transfer, or issuance of personal property is made pursuant to RCW 11.62.010 as now or hereafter amended is answerable and accountable therefor to any personal representative of the estate of the decedent or to any other person having a superior right thereto. [1990 c 180 § 4; 1977 ex.s. c 234 § 12; 1974 ex.s. c 117 § 5.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.62.030 Payment to surviving spouse of moneys on deposit of deceased credit union member—Limitation—Affidavit—Accounting to personal representative. On the death of any member of any credit union organized under chapter 31.12 RCW or federal law, such credit union may pay to the surviving spouse the moneys of such member on deposit to the credit of said deceased member, including moneys deposited as shares in said credit union, in cases where the amount of deposit does not exceed the sum of one thousand dollars, upon receipt of an affidavit from the surviving spouse to the effect that the member died and no executor or administrator has been appointed for the member's estate, and the member had on deposit in said credit union money not exceeding the sum of one thousand dollars. The payment of such deposit made in good faith to the spouse making the affidavit shall be a full acquittance and release of the credit union for the amount of the deposit so paid.

No probate proceeding shall be necessary to establish the right of said surviving spouse to withdraw said deposits upon the filing of said affidavit: PROVIDED, That whenever a personal representative is appointed in an estate where a withdrawal of deposits has been had in compliance with this section, the spouse so withdrawing said deposits shall account for the same to the personal representative. The credit union may also pay out the moneys on deposit to the credit of the deceased upon presentation of an affidavit as provided in RCW 11.62.010, as now or hereafter amended. [1980 c 41 § 10.]

Severability—1980 c 41: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 41 § 13.]

Chapter 11.64

PARTNERSHIP PROPERTY

Sections

- 11.64.002 Inventory—Appraisement.
- 11.64.008 Surviving partner may continue in possession.
- 11.64.016 Security may be required.
- 11.64.022 Failure to furnish inventory, list liabilities, permit appraisal, etc.—Show cause—Contempt of court—Receiver.
- 11.64.030 Surviving partner or partners may purchase deceased's interest—Valuation—Conditions of sale—Protection against partnership liabilities.
- 11.64.040 Surviving partner may operate under agreement with estate—Termination.

11.64.002 Inventory—Appraisement. Within three months after receiving written request from the personal representative the surviving partner or partners of the partnership shall furnish the personal representative with a verified inventory of the assets of the partnership. The inventory shall state the value of the assets as shown by the books of the partnership and list the liabilities of the partnership. At the request of the personal representative, the surviving partner or partners shall permit the assets of the partnership to be appraised, which appraisal shall include the value of the assets of the partnership and a list of the liabilities. [1977 ex.s. c 234 § 13; 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.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Inventory of estate to identify decedent's share in partnership: RCW 11.44.015(1)(j).

11.64.008 Surviving partner may continue in possession. 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. [1977 ex.s. c 234 § 14; 1965 c 145 § 11.64.008. Prior: 1951 c 197 § 2.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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, after a hearing, 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. [1977 ex.s. c 234 § 15; 1965 c 145 § 11.64.016. Prior: 1951 c 197 § 3.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.022 Failure to furnish inventory, list liabilities, permit appraisal, etc.—Show cause—Contempt of court—Receiver. If the surviving partner or partners fail or refuse to furnish an inventory or list of liabilities, to permit an appraisal, or to account to the personal representative, or to furnish a bond when required pursuant to RCW 11.64.016, the court shall order a citation to issue requiring the surviving partner or partners to appear and show cause why they have not furnished an inventory list of liabilities, or permitted an appraisal or why they should not account to the personal representative or file a bond. The citation shall be served not less than ten days before the return day designated therein, or such shorter period as the court upon a showing of good cause deems appropriate. If the surviving partner or partners neglect or refuse to file an inventory or list of liabilities, or to permit an 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 of court as provided in chapter 7.21 RCW. 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. [1989 c 373 § 15; 1977 ex.s. c 234 § 16; 1965 c 145 § 11.64.022. Prior: 1951 c 197 § 4.]

Severability—1989 c 373: See RCW 7.21.900.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.030 Surviving partner or partners may purchase deceased's interest—Valuation—Conditions of sale—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 a hearing pursuant to such petition the court shall, in such manner as it sees fit, determine and by order fix the value of the interest of the deceased partner over and above all partnership debts and obligations, the price, terms, and conditions of such sale and the period of time during which the surviving partner or partners shall have the prior right to purchase the interest of the deceased partner. 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. [1977 ex.s. c 234 § 17; 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.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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 social and health services—Effect.

11.66.010 Social security benefits—Payment to survivors or department of social and health services—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 secretary of social and health services 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 secretary of social and health services 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. [1979 c 141 § 12; 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.]

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

- 11.68.011 Settlement without court intervention—Petition—Conditions—Exceptions.
- 11.68.021 Hearing on petition for nonintervention powers.
- 11.68.041 Petition for nonintervention powers—Notice requirements—Exceptions.
- 11.68.050 Objections to granting of nonintervention powers—Restrictions.
- 11.68.060 Death, resignation, or disablement of personal representative—Successor to administer nonintervention powers—Petition.
- 11.68.065 Report of affairs of estate—Petition by beneficiary—Filing—Notice—Hearing—Other accounting and information.
- 11.68.070 Procedure when personal representative recant to trust or subject to removal.
- 11.68.080 Vacation or restriction of nonintervention powers following insolvency—Notice—Determinations affecting prior grants of nonintervention powers upon petition—Endorsement on prior orders.
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- 11.68.095 Co-personal representatives—Powers.
- 11.68.100 Closing of estate—Alternative decrees—Notice—Hearing—Fees.
- 11.68.110 Declaration of completion of probate—Contents—Notice—Discharge of personal representative—Waiver of notice.

- 11.68.112 Final distribution upon declaration and notice of filing of declaration of completion of probate—Special powers of personal representative—Discharge from liability.
- 11.68.114 Declaration of completion of probate—Special powers of personal representative to hold reserve and deal with taxing authorities—Notice of filing of declaration—Discharge from liability.
- 11.68.120 Nonintervention powers not deemed waived by obtaining order or decree.

11.68.011 Settlement without court intervention—Petition—Conditions—Exceptions. (1) A personal representative may petition the court for nonintervention powers, whether the decedent died testate or intestate.

(2) Unless the decedent has specified in the decedent's will, if any, that the court not grant nonintervention powers to the personal representative, the court shall grant nonintervention powers to a personal representative who petitions for the powers if the court determines that the decedent's estate is solvent, taking into account probate and nonprobate assets, and that:

(a) The petitioning personal representative was named in the decedent's probated will as the personal representative;

(b) The decedent died intestate, the petitioning personal representative is the decedent's surviving spouse, the decedent's estate is composed of community property only, and the decedent had no issue: (i) Who is living or in gestation on the date of the petition; (ii) whose identity is reasonably ascertainable on the date of the petition; and (iii) who is not also the issue of the petitioning spouse; or

(c) The personal representative was not a creditor of the decedent at the time of the decedent's death and the administration and settlement of the decedent's will or estate with nonintervention powers would be in the best interests of the decedent's beneficiaries and creditors. However, the administration and settlement of the decedent's will or estate with nonintervention powers will be presumed to be in the beneficiaries' and creditors' best interest until a person entitled to notice under RCW 11.68.041 rebuts that presumption by coming forward with evidence that the grant of nonintervention powers would not be in the beneficiaries' or creditors' best interests.

(3) The court may base its findings of facts necessary for the grant of nonintervention powers on: (a) Statements of witnesses appearing before the court; (b) representations contained in a verified petition for nonintervention powers, in an inventory made and returned upon oath into the court, or in an affidavit filed with the court; or (c) other proof submitted to the court. [1997 c 252 § 59.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.68.021 Hearing on petition for nonintervention powers. A hearing on a petition for nonintervention powers may be held at the time of the appointment of the personal representative or at any later time. [1997 c 252 § 60.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.68.041 Petition for nonintervention powers—Notice requirements—Exceptions. (1) Advance notice of the hearing on a petition for nonintervention powers referred

to in RCW 11.68.011 is not required in those circumstances in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a) and (b).

(2) In all other cases, if the petitioner wishes to obtain nonintervention powers, the personal representative shall give notice of the petitioner's intention to apply to the court for nonintervention powers to all heirs, all beneficiaries of a gift under the decedent's will, and all persons who have requested, and who are entitled to, notice under RCW 11.28.240, except that:

(a) A person is not entitled to notice if the person has, in writing, either waived notice of the hearing or consented to the grant of nonintervention powers; and

(b) An heir who is not also a beneficiary of a gift under a will is not entitled to notice if the will has been probated and the time for contesting the validity of the will has expired.

(3) The notice required by this section must be either personally served or sent by regular mail at least ten days before the date of the hearing, and proof of mailing of the notice must be by affidavit filed in the cause. The notice must contain the decedent's name, the probate cause number, the name and address of the personal representative, and must state in substance as follows:

(a) The personal representative has petitioned the superior court of the state of Washington for county, for the entry of an order granting nonintervention powers and a hearing on that petition will be held on , the day of , at o'clock, . . M.;

(b) The petition for an order granting nonintervention powers has been filed with the court;

(c) Following the entry by the court of an order granting nonintervention powers, the personal representative is entitled to administer and close the decedent's estate without further court intervention or supervision; and

(d) A person entitled to notice has the right to appear at the time of the hearing on the petition for an order granting nonintervention powers and to object to the granting of nonintervention powers to the personal representative.

(4) If notice is not required, or all persons entitled to notice have either waived notice of the hearing or consented to the entry of an order granting nonintervention powers as provided in this section, the court may hear the petition for an order granting nonintervention powers at any time. [1997 c 252 § 61.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.68.050 Objections to granting of nonintervention powers—Restrictions. (1) If at the time set for the hearing upon a petition for nonintervention powers, any person entitled to notice of the hearing on the petition under RCW 11.68.041 shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider the objections, if any, in connection with its determination under RCW 11.68.011(2)(c) of whether a grant of nonintervention powers would be in the best interests of the decedent's beneficiaries.

(2) The nonintervention powers of a personal representative may not be restricted at a hearing on a petition for nonintervention powers in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a)

and (b), unless a will specifies that the nonintervention powers of a personal representative may be restricted when the powers are initially granted. In all other cases, including without limitation any hearing on a petition that alleges that the personal representative has breached its duties to the beneficiaries of the estate, the court may restrict the powers of the personal representative in such manner as the court determines to be in the best interests of the decedent's beneficiaries. [1997 c 252 § 62; 1977 ex.s. c 234 § 21; 1974 ex.s. c 117 § 17.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 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—Petition. If any personal representative of the estate of the decedent dies, resigns, or otherwise becomes disabled from any cause from acting as the nonintervention personal representative, the successor personal representative, or a person who has petitioned to be appointed as a successor personal representative, may petition the court for nonintervention powers, and the court shall act, in accordance with RCW 11.68.011 through 11.68.041 and 11.68.050. [1997 c 252 § 63; 1977 ex.s. c 234 § 22; 1974 ex.s. c 117 § 18.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.68.065 Report of affairs of estate—Petition by beneficiary—Filing—Notice—Hearing—Other accounting and information. A beneficiary whose interest in an estate has not been fully paid or distributed may petition the court for an order directing the personal representative to deliver a report of the affairs of the estate signed and verified by the personal representative. The petition may be filed at any time after one year from the day on which the report was last delivered, or, if none, then one year after the order appointing the personal representative. Upon hearing of the petition after due notice as required in chapter 11.96 RCW, the court may, for good cause shown, order the personal representative to deliver to the petitioner the report for any period not covered by a previous report. The report for the period shall include such of the following as the court may order: A description of the amount and nature of all property, real and personal, that has come into the hands of the personal representative; a statement of all property collected and paid out or distributed by the personal representative; a statement of claims filed and allowed against the estate and those rejected; any estate, inheritance, or fiduciary income tax returns filed by the personal representative; and such other information as the order may require. This subsection does not limit any power the court might otherwise have at any time during the administration of the estate to require the personal representative to account or furnish

other information to any person interested in the estate. [1997 c 252 § 64.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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 the powers of the personal representative may be restricted or the personal representative may be removed and a successor appointed. 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. [1977 ex.s. c 234 § 23; 1974 ex.s. c 117 § 19.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.68.080 Vacation or restriction of nonintervention powers following insolvency—Notice—Determinations affecting prior grants of nonintervention powers upon petition—Endorsement on prior orders. (1) Within ten days after the personal representative has received from alleged creditors under chapter 11.40 RCW claims that have an aggregate face value that, when added to the other debts and to the taxes and expenses of greater priority under applicable law, would appear to cause the estate to be insolvent, the personal representative shall notify in writing all beneficiaries under the decedent's will and, if any of the decedent's property will pass according to the laws of intestate succession, all heirs, together with any unpaid creditors, other than a creditor whose claim is then barred under chapter 11.40 RCW or the otherwise applicable statute of limitations, that the estate might be insolvent. The personal representative shall file a copy of the written notice with the court.

(2) Within ten days after an estate becomes insolvent, the personal representative shall petition under chapter 11.96 RCW for a determination of whether the court should reaffirm, rescind, or restrict in whole or in part any prior grant of nonintervention powers. Notice of the hearing must be given in accordance with RCW 11.96.100 and 11.96.110.

(3) If, upon a petition under chapter 11.96 RCW of any personal representative, beneficiary under the decedent's will, heir if any of the decedent's property passes according

to the laws of intestate succession, or any unpaid creditor with a claim that has been accepted or judicially determined to be enforceable, the court determines that the decedent's estate is insolvent, the court shall reaffirm, rescind, or restrict in whole or in part any prior grant of nonintervention powers to the extent necessary to protect the best interests of the beneficiaries and creditors of the estate.

(4) If the court rescinds or restricts a prior grant of nonintervention powers, the court shall endorse the term "powers rescinded" or "powers restricted" upon the prior order together with the date of the endorsement. [1997 c 252 § 65; 1977 ex.s. c 234 § 24; 1974 ex.s. c 117 § 20.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.68.090 Powers of personal representative under nonintervention will—Scope—Relief from duties, restrictions, liabilities by will. (1) Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under RCW 11.98.070 and chapters 11.100 and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

(2) Except as otherwise provided in chapter 11.108 RCW or elsewhere in order to preserve a marital deduction from estate taxes, a testator may by a will relieve the personal representative from any or all of the duties, restrictions, and liabilities imposed: Under common law; by chapters 11.54, 11.56, 11.100, 11.102, and 11.104 RCW; or by RCW 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a testator may likewise alter or deny any or all of the privileges and powers conferred by this title, and may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this title. If any common law or any statute referenced earlier in this subsection is in conflict with a will, the will controls whether or not specific reference is made in the will to this section. However, notwithstanding the rest of this subsection, a personal representative may not be relieved of the duty to act in good faith and with honest judgment. [1997 c 252 § 66; 1988 c 29 § 3; 1985 c 30 § 7. Prior: 1984 c 149 § 10; 1974 ex.s. c 117 § 21.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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

11.68.095 Co-personal representatives—Powers. All of the provisions of RCW 11.98.016 regarding the exercise of powers by co-trustees of a trust shall apply to the co-personal representatives of an estate in which the co-personal representatives have been granted nonintervention powers, as if, for purposes of the interpretation of that law, co-personal representatives were co-trustees and an estate were a trust. [1997 c 252 § 67.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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 distributes 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 payment of said fees 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 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. [1977 ex.s. c 234 § 25; 1974 ex.s. c 117 § 22.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.68.110 Declaration of completion of probate—Contents—Notice—Discharge of personal representative—Waiver of notice. (1) If a personal representative who has acquired nonintervention powers does not apply to the court for either of the final decrees provided for in RCW 11.68.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration that must state as follows:

(a) The date of the decedent’s death and the decedent’s residence at the time of death;

(b) Whether or not the decedent died testate or intestate;

(c) If the decedent died testate, the date of the decedent’s last will and testament and the date of the order probating the will;

(d) 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 estate taxes due as the result of the decedent’s death has been determined, settled, and paid;

(e) That the personal representative has completed the administration of the decedent’s estate without court intervention, and the estate is ready to be closed;

(f) 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 heir; and

(g) The amount of fees paid or to be paid to each of the following: (i) Personal representative or representatives; (ii) lawyer or lawyers; (iii) appraiser or appraisers; and (iv) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

(2) Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent petitions 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, lawyers, 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 automatically discharged without further order of the court and the representative’s powers will cease thirty days after the filing of the declaration of completion of probate, and the declaration of completion of probate shall, at that time, be the equivalent of the entry of a decree of distribution in accordance with chapter 11.76 RCW for all legal intents and purposes.

(3) Within five days of the date of the filing of the declaration of completion, the personal representative or the personal representative’s lawyer shall mail a copy of the declaration of completion to each heir, legatee, or devisee of the decedent, who: (a) Has not waived notice of the filing, in writing, filed in the cause; and (b) either has not received the full amount of the distribution to which the heir, legatee, or devisee is entitled or has a property right that might be affected adversely by the discharge of the personal representative under this section, together with a notice which shall be substantially as follows:

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

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . day of . . . , 19. . . ; unless you shall file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative’s lawyer, within thirty days after the date of the filing, the amount of fees paid or to be paid will be deemed reasonable, the acts of the personal representative will be deemed approved, the personal representative will be automatically discharged without further order of the court, 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 within the period specified, the undersigned will request the court to fix a time and place for the hearing of your 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 the petition.

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

.....
Personal Representative

(4) If all heirs, devisees, and legatees of the decedent entitled to notice under this section waive, in writing, the notice required by this section, the personal representative will be automatically discharged without further order of the court and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. In those instances where the personal representative has been required to furnish bond, and a declaration of completion is filed pursuant to this section, any bond furnished by the personal representative shall be automatically discharged upon the discharge of the personal representative. [1998 c 292 § 202; 1997 c 252 § 68; 1990 c 180 § 5; 1985 c 30 § 8. Prior: 1984 c 149 § 11; 1977 ex.s. c 234 § 26; 1974 ex.s. c 117 § 23.]

Retroactive application—1998 c 292: See note following RCW 11.54.070.

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02 900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Effective date, application—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.68.112 Final distribution upon declaration and notice of filing of declaration of completion of probate—Special powers of personal representative—Discharge from liability. If the declaration of completion of probate and the notice of filing of declaration of completion of probate state that the personal representative intends to make final distribution within five business days after the final date on which a beneficiary could petition for an order to

approve fees or to require an accounting, which date is referred to in this section as the "effective date of the declaration of completion," and if the notice of filing of declaration of completion of probate sent to each beneficiary who has not received everything to which that beneficiary is entitled from the decedent's estate specifies the amount of the minimum distribution to be made to that beneficiary, the personal representative retains, for five business days following the effective date of the declaration of completion, the power to make the stated minimum distributions. In this case, the personal representative is discharged from all claims other than those relating to the actual distribution of the reserve, at the effective date of the declaration of completion. The personal representative is only discharged from liability for the distribution of the reserve when the whole reserve has been distributed and each beneficiary has received at least the distribution which that beneficiary's notice stated that the beneficiary would receive. [1997 c 252 § 69.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.68.114 Declaration of completion of probate—Special powers of personal representative to hold reserve and deal with taxing authorities—Notice of filing of declaration—Discharge from liability. (1) The personal representative retains the powers to:

Deal with the taxing authority of any federal, state, or local government; hold a reserve in an amount not to exceed three thousand dollars, for the determination and payment of any additional taxes, interest, and penalties, and of all reasonable expenses related directly or indirectly to such determination or payment; pay from the reserve the reasonable expenses, including compensation for services rendered or goods provided by the personal representative or by the personal representative's employees, independent contractors, and other agents, in addition to any taxes, interest, or penalties assessed by a taxing authority; receive and hold any credit, including interest, from any taxing authority; and distribute the residue of the reserve to the intended beneficiaries of the reserve; if:

(a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the declaration of completion of probate states that:

The personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed, except for the determination of taxes and of interest and penalties thereon as permitted under this section;

and

(b) The notice of the filing of declaration of completion of probate must be in substantially the following form:

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

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . day of . . . ; unless you file a petition in the above-entitled court requesting the court to approve

the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative's lawyer, within thirty days after the date of the filing:

(i) The schedule of fees set forth in the Declaration of Completion of Probate will be deemed reasonable;

(ii) The Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW;

(iii) The acts that the personal representative performed before the Declaration of Completion of Probate was filed will be deemed approved, and the personal representative will be automatically discharged without further order of the court with respect to all such acts; and

(iv) The personal representative will retain the power to deal with the taxing authorities, together with \$. . . for the determination and payment of all remaining tax obligations. Only that portion of the reserve that remains after the settlement of any tax liability, and the payment of any expenses associated with such settlement, will be distributed to the persons legally entitled to the reserve.

(2) If the requirements in subsection (1) of this section are met, the personal representative is discharged from all claims other than those relating to the settlement of any tax obligations and the actual distribution of the reserve, at the effective date of the declaration of completion. The personal representative is discharged from liability from the settlement of any tax obligations and the distribution of the reserve, and the personal representative's powers cease, thirty days after the personal representative has mailed to those persons who would have shared in the distribution of the reserve had the reserve remained intact and has filed with the court copies of checks or receipts showing how the reserve was in fact distributed, unless a person with an interest in the reserve petitions the court earlier within the thirty-day period for an order requiring an accounting of the reserve or an order determining the reasonableness, or lack of reasonableness, of distributions made from the reserve. If the personal representative has been required to furnish a bond, any bond furnished by the personal representative is automatically discharged upon the final discharge of the personal representative. [1998 c 292 § 203; 1997 c 252 § 70.]

Retroactive application—1998 c 292: See note following RCW 11.54.070.

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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 ex.s. c 117 § 24.]

Application, construction—Severability—Effective date—1974 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 Decree of 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 Decree of 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. Formerly RCW 11.72.010 through 11.72.070.]

Distribution of estate income by a personal representative who has been granted nonintervention powers under chapter 11.68 RCW: RCW 11.104.050(2)(b).

Chapter 11.76

SETTLEMENT OF ESTATES

Sections

- 11.76.010 Report of personal representative—Contents—Interim reports.
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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.]

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—Prohibitions: 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 appraisement, 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 fees 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 incapacitated person by guardian ad litem or limited guardian—Exception. If there be any alleged incapacitated person as defined in RCW 11.88.010 interested in the estate who has no legally appointed guardian or limited guardian, the court:

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

(2) For hearings held under RCW 11.54.010, 11.68.041, 11.68.100, and 11.76.050 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 the allegedly incapacitated person 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 alleged incapacitated person may have an interest, who, on behalf of the alleged incapacitated person, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his or her 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 the surviving spouse and the decedent and who is incapacitated solely for the reason of his or her being under eighteen years of age. [1997 c 252 § 71; 1977 ex.s. c 80 § 15; 1974 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—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Application, construction—Severability—Effective date—1974 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, it shall be required 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;

(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; or

(3) A custodian be selected and the money or property be transferred to the custodian subject to chapter 11.114 RCW. [1997 c 252 § 72; 1991 c 193 § 28; 1988 c 29 § 5; 1974 ex.s. c 117 § 12; 1971 c 28 § 3; 1965 c 145 § 11.76.095.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

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

11.76.100 Receipts for expenses from 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 until the probate has been completed and the personal representative has been discharged; 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. [1987 c 363 § 2; 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: Chapter 11.10 RCW.

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.]

11.76.150 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: Chapter 11.10 RCW.

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: Chapter 11.10 RCW.

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 claim. 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 department of revenue. 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 department of revenue. 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 department of revenue for deposit in the state treasury in the fund in which escheats and forfeitures are by law required to be deposited. [1975 1st ex.s. c 278 § 10; 1965 c 145 § 11.76.220. Prior: 1955 ex.s. c 7 § 4; 1917 c 156 § 167; RRS § 1537.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

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 department of revenue 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 department of revenue, 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. [1975 1st ex.s. c 278 § 11; 1965 c 145 § 11.76.240. Prior: 1955 ex.s. c 7 § 6; 1917 c 156 § 169; RRS § 1539.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

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 department of revenue 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 department of revenue 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. [1975 1st ex.s. c 278 § 12; 1965 c 145 § 11.76.245. Prior: 1955 ex.s. c 7 § 8.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

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.
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- 11.80.110 Escheat for want of presumptive heirs.
- 11.80.120 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, etc.: RCW 4.28.140 through 4.28.160;
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Written finding of presumed death, missing in action, etc.: RCW 5.40.020 through 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 hereinafter 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 unclaimed property act: Chapter 63.29 RCW.

11.80.120 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

.....,
Plaintiff,
vs.
.....,
Defendant.
.....

No.
PETITION FOR
SUMMARY
RELIEF

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

.....
Petitioner

(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.
11.84.025 Disposition of retirement system proceeds payable to slayer.
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 Reversion and vested remainder.
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 to be construed broadly.

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.]

11.84.025 Disposition of retirement system proceeds payable to slayer. Proceeds payable to a slayer as the beneficiary of any benefits flowing from one of the retirement systems listed in RCW 41.50.030, by virtue of the decedent's membership in the department of retirement systems or by virtue of the death of decedent, shall be paid instead as designated in RCW 41.04.273. [1998 c 292 § 502.]

Application—Conflict with federal requirements—1998 c 292: See notes following RCW 41.04.273.

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

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 Reversion and vested remainder. 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 to be construed broadly. This chapter shall be construed broadly to effect the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed. [1998 c 292 § 503; 1965 c 145 § 11.84.900. Prior: 1955 c 141 § 14.]

Application—Conflict with federal requirements—1998 c 292: See notes following RCW 41.04.273.

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

Chapter 11.86

DISCLAIMER OF INTERESTS

Sections

- 11.86.011 Definitions.
- 11.86.021 Disclaimer of interest authorized.
- 11.86.031 Contents of disclaimer—Time and filing requirements—Fee.
- 11.86.041 Disposition of disclaimed interest.
- 11.86.051 When right to disclaim is barred.
- 11.86.061 Effect of spendthrift or similar restriction.
- 11.86.071 Liability for distribution—Effect of disclaimer.
- 11.86.080 Rights under other statutes or rules not abridged.
- 11.86.090 Interests existing on June 7, 1973.

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

(1) "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

(2) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, any vested or contingent interest in any such property, any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property. "Interest" includes, but is not limited to, an interest created in any of the following manners:

- (a) By intestate succession;
- (b) Under a will;
- (c) Under a trust;
- (d) By succession to a disclaimed interest;
- (e) By virtue of an election to take against a will;
- (f) By creation of a power of appointment;
- (g) By exercise or nonexercise of a power of appointment;
- (h) By an inter vivos gift, whether outright or in trust;
- (i) By surviving the death of a depositor of a trust or P.O.D. account within the meaning of RCW 30.22.040;
- (j) Under an insurance or annuity contract;
- (k) By surviving the death of another joint tenant;
- (l) Under an employee benefit plan;
- (m) Under an individual retirement account, annuity, or bond;
- (n) Under a community property agreement; or
- (o) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

(3) "Creator of the interest" means a person who establishes, declares, or otherwise creates an interest.

(4) "Disclaimer" means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.

(5) "Disclaimant" means a beneficiary who executes a disclaimer on his or her own behalf or a person who executes a disclaimer on behalf of a beneficiary.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

(7) "Date of the transfer" means:

- (a) For an inter vivos transfer, the date of the creation of the interest; or
- (b) For a transfer upon the death of the creator of the interest, the date of the death of the creator.

A joint tenancy interest of a deceased joint tenant shall be deemed to be transferred at the death of the joint tenant rather than at the creation of the joint tenancy. [1989 c 34 § 1.]

11.86.021 Disclaimer of interest authorized. (1) A beneficiary may disclaim an interest in whole or in part, or with reference to specific parts, shares or assets, in the manner provided in RCW 11.86.031.

(2) Likewise, a beneficiary may so disclaim through an agent or attorney so authorized by written instrument.

(3) A personal representative, guardian, attorney in fact if authorized under a durable power of attorney under chapter 11.94 RCW, or other legal representative of the estate of a minor, incompetent, or deceased beneficiary, may

so disclaim on behalf of the beneficiary, with or without court order, if:

(a) The legal representative deems the disclaimer to be in the best interests of those interested in the estate of the beneficiary and of those who take the disclaimed interest because of the disclaimer, and not detrimental to the best interests of the beneficiary; and

(b) In the case of a guardian, no order has been issued under RCW 11.92.140 determining that the disclaimer is not in the best interests of the beneficiary. [1989 c 34 § 2.]

11.86.031 Contents of disclaimer—Time and filing requirements—Fee. (1) The disclaimer shall:

(a) Be in writing;

(b) Be signed by the disclaimant;

(c) Identify the interest to be disclaimed; and

(d) State the disclaimer and the extent thereof.

(2) The disclaimer shall be delivered or mailed as provided in subsection (3) of this section at any time after the creation of the interest, but in all events by nine months after the latest of:

(a) The date the beneficiary attains the age of twenty-one years;

(b) The date of the transfer; or

(c) The date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested.

(3) The disclaimer shall be mailed by first-class mail, or otherwise delivered, to the creator of the interest, the creator's legal representative, or the holder of the legal title to the property to which the interest relates or, if the creator is dead and there is no legal representative or holder of legal title, to the person having possession of the property.

(4) If the date of the transfer is the date of the death of the creator of the interest, a copy of the disclaimer may be filed with the clerk of the probate court in which the estate of the creator 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 such person, where it shall be indexed under the name of the decedent in the probate index upon the payment of a fee established under RCW 36.18.016.

(5) The disclaimer of an interest in real property may be recorded, but shall constitute notice to all persons only from and after the date of recording. If recorded, a copy of the disclaimer shall be recorded in the office of the auditor in the county or counties where the real property is situated. [1995 c 292 § 4; 1989 c 34 § 3.]

11.86.041 Disposition of disclaimed interest. (1) Unless the instrument creating an interest directs to the contrary, the interest disclaimed shall pass as if the beneficiary had died immediately prior to the date of the transfer of the interest. The disclaimer shall relate back to this date for all purposes.

(2) Unless the beneficiary is the surviving spouse of a deceased creator of the interest, the beneficiary shall also be deemed to have disclaimed all interests in the property, including all beneficial interests in any trust into which the disclaimed property may pass. This subsection applies

unless the disclaimer specifically refers to this subsection and states to the contrary.

(3) Any future interest taking effect in possession or enjoyment after termination of the interest disclaimed takes effect as if the beneficiary had died prior to the date of the beneficiary's final ascertainment as a beneficiary and the indefeasible vesting of the interest.

(4) The disclaimer is binding upon the beneficiary and all persons claiming through or under the beneficiary.

(5) Unless the instrument creating the interest directs to the contrary, a beneficiary whose interest in a devise or bequest under a will has been disclaimed shall be deemed to have died for purposes of RCW 11.12.110.

(6) In the case of a disclaimer that results in property passing to a trust over which the disclaimant has any power to direct the beneficial enjoyment of the disclaimed property, the disclaimant shall also be deemed to have disclaimed any power to direct the beneficial enjoyment of the disclaimed property, unless the power is limited by an ascertainable standard for the health, education, support, or maintenance of any person as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under those sections. This subsection applies unless the disclaimer specifically refers to this subsection and states to the contrary. This subsection shall not be deemed to otherwise prevent such a disclaimant from acting as trustee or executor over disclaimed property. [1997 c 252 § 73; 1991 c 7 § 1; 1989 c 34 § 4.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.86.051 When right to disclaim is barred. A beneficiary may not disclaim an interest if:

(1) The beneficiary has accepted the interest or a benefit thereunder;

(2) The beneficiary has assigned, conveyed, encumbered, pledged, or otherwise transferred the interest, or has contracted therefor;

(3) The interest has been sold or otherwise disposed of pursuant to judicial process; or

(4) The beneficiary has waived the right to disclaim in writing. The written waiver of the right to disclaim also is binding upon all persons claiming through or under the beneficiary. [1989 c 34 § 5.]

11.86.061 Effect of spendthrift or similar restriction. A beneficiary may disclaim under this chapter notwithstanding any limitation on the interest of the beneficiary in the nature of a spendthrift provision or similar restriction. [1989 c 34 § 6.]

11.86.071 Liability for distribution—Effect of disclaimer. No legal representative of a creator of the interest, holder of legal title to property an interest in which is disclaimed, or person having possession of the property 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 the disclaimer is barred as provided in RCW 11.86.051. [1989 c 34 § 7.]

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 June 7, 1973. Any interest which exists on June 7, 1973 but which has not then become indefeasibly vested, or the taker of which has not then become finally ascertained, or of the existence of the transfer of which the beneficiary lacks knowledge, may be disclaimed after June 7, 1973 in the manner provided in RCW 11.86.031. However, for the purposes of RCW 11.86.031(2), the date on which the beneficiary first knows of the existence of the transfer shall be deemed to be the date of the transfer. [1989 c 34 § 8; 1973 c 148 § 10.]

Chapter 11.88

GUARDIANSHIP—APPOINTMENT, QUALIFICATION, REMOVAL OF GUARDIANS

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(1998 Ed.)

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11.88.005 Legislative intent. It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs. [1990 c 122 § 1; 1977 ex.s. c 309 § 1; 1975 1st ex.s. c 95 § 1.]

Effective date—1990 c 122: "This act shall take effect on July 1, 1991." [1990 c 122 § 38.]

Severability—1977 ex.s. c 309: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 309 § 18.]

11.88.008 "Professional guardian" defined. (Effective January 1, 1999.) As used in this chapter, "professional guardian" means a guardian appointed under this chapter

who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian of three or more incapacitated persons. [1997 c 312 § 2.]

Effective date—1997 c 312: See note following RCW 11.88.020.

11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal. (1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) When a court imposes a full guardianship for an incapacitated person, the person shall be considered incompetent for purposes of rationally exercising the right to vote and shall lose the right to vote, unless the court specifically finds that the person is rationally capable of exercising the franchise. Imposition of a limited guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise. [1991 c 289 § 1; 1990 c 122 § 2; 1984 c 149 § 176; 1977 ex.s. c 309 § 2; 1975 1st ex.s. c 95 § 2; 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.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.020 Qualifications. (*Effective until January 1, 1999.*) 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 or limited guardian of the person and/or the estate of an incapacitated person; any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian or limited guardian of the estate of an incapacitated person; and any nonprofit corporation may act as guardian or limited guardian of the person and/or estate of an incapacitated person if the articles of incorporation or bylaws of such corporation permit such action and such corporation is in compliance with all applicable provisions of Title 24 RCW. No person is qualified to serve as a 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, guardian, or limited guardian in the state;

(6) a person whom the court finds unsuitable. [1990 c 122 § 3; 1975 1st ex.s. c 95 § 3; 1971 c 28 § 4; 1965 c 145 § 11.88.020. Prior: 1917 c 156 § 196; RRS § 1566.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Banks and trust companies may act as guardian: RCW 11.36.010.

11.88.020 Qualifications. (Effective January 1, 1999.) (1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

(a) under eighteen years of age except as otherwise provided herein;

(b) of unsound mind;

(c) convicted of a felony or of a misdemeanor involving moral turpitude;

(d) 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;

(e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(f) a person whom the court finds unsuitable.

(2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW 11.88.080. [1997 c 312 § 1; 1990 c 122 § 3; 1975 1st ex.s. c 95 § 3; 1971 c 28 § 4; 1965 c 145 § 11.88.020. Prior: 1917 c 156 § 196; RRS § 1566.]

Effective date—1997 c 312: "Sections 1 and 2 of this act take effect January 1, 1999." [1997 c 312 § 4.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Banks and trust companies may act as guardian: RCW 11.36.010.

11.88.030 Petition—Contents—Hearing. (1) Any person or *entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for

filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment;

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(3) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

**IMPORTANT NOTICE
PLEASE READ CAREFULLY**

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE _____ COUNTY SUPERIOR COURT BY _____. IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- (1) TO MARRY OR DIVORCE;
- (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- (6) TO POSSESS A LICENSE TO DRIVE;
- (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(5) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new

hearing date. [1996 c 249 § 8; 1995 c 297 § 1; 1991 c 289 § 2; 1990 c 122 § 4; 1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 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.]

***Reviser's note:** Trust companies, national banks, and nonprofit corporations are no longer referred to in RCW 11.88.020, as amended by 1997 c 312 § 1.

Intent—1996 c 249: See note following RCW 2.56.030.

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Vulnerable elderly person—Lack of capacity to consent—Guardianship action by department of social and health services: RCW 74.34.060.

11.88.040 Notice and hearing, when required—Service—Procedure. Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally upon the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

- (1) The alleged incapacitated person, or minor, if under fourteen years of age;
- (2) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse of the alleged incapacitated person if any;
- (3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. 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 limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, 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.

The alleged incapacitated person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final

hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition. [1995 c 297 § 2; 1991 c 289 § 3; 1990 c 122 § 5; 1984 c 149 § 177; 1977 ex.s. c 309 § 4; 1975 1st ex.s. c 95 § 5; 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.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Waiver of notice: RCW 11.16.083.

11.88.045 Legal counsel and jury trial—Proof—Medical report—Examinations—Waiver. (1)(a) Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to

represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter 18.71 or 18.57 RCW or licensed or certified psychologist selected by the guardian ad litem. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person. The guardian ad litem may also obtain a supplemental examination. The physician or psychologist shall have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

(a) The name and address of the examining physician or psychologist;

(b) The education and experience of the physician or psychologist pertinent to the case;

(c) The dates of examinations of the alleged incapacitated person;

(d) A summary of the relevant medical, functional, neurological, psychological, or psychiatric history of the alleged incapacitated person as known to the examining physician or psychologist;

(e) The findings of the examining physician or psychologist as to the condition of the alleged incapacitated person;

(f) Current medications;

(g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;

(h) Opinions on the specific assistance the alleged incapacitated person needs;

(i) Identification of persons with whom the physician or psychologist has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or psychological report meeting the above requirements is filed.

The requirement of filing a medical report is waived if the basis of the guardianship is minority.

(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested

under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective. [1996 c 249 § 9; 1995 c 297 § 3; 1991 c 289 § 4; 1990 c 122 § 6; 1977 ex.s. c 309 § 5; 1975 1st ex.s. c 95 § 7.]

Intent—1996 c 249: See note following RCW 2.56.030.

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.080 Testamentary guardians. When either parent is deceased, the surviving parent of any minor child may, by last will in writing appoint a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the will or afterwards, to continue during the minority of such child or for any less time. Every testamentary guardian of the estate of a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed under this chapter. The court shall confirm the parent's testamentary appointment unless the court finds, based upon evidence presented at a hearing on the matter, that the individual appointed in the surviving parent's will is not qualified to serve. [1990 c 122 § 7; 1965 c 145 § 11.88.080. Prior: 1917 c 156 § 210; RRS § 1580; prior: Code 1881 § 1618; 1860 p 228 § 335.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.88.090 Guardian ad litem—Appointment—Qualifications—Notice of and statement by guardian ad litem—Hearing and notice—Attorneys' fees and costs—Registry—Duties—Report—Responses—Fee. (1) 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 ad litem to defend the interests of any incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his or her behalf.

(2) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person, who shall be a person found or known by the court to:

(a) Be free of influence from anyone interested in the result of the proceeding; and

(b) Have the requisite knowledge, training, or expertise to perform the duties required by this section.

The guardian ad litem shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, each party with a statement including: His or her training relating to the duties as a guardian ad litem; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the guardian ad litem has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual

service or filing of the guardian ad litem's statement, any party may set a hearing and file and serve a motion for an order to show cause why the guardian ad litem should not be removed for one of the following three reasons: (i) Lack of expertise necessary for the proceeding; (ii) an hourly rate higher than what is reasonable for the particular proceeding; or (iii) a conflict of interest. Notice of the hearing shall be provided to the guardian ad litem and all parties. If, after a hearing, the court enters an order replacing the guardian ad litem, findings shall be included, expressly stating the reasons for the removal. If the guardian ad litem is not removed, the court has the authority to assess to the moving party, attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (4) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.

(3)(a) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

(b) To be eligible for the registry a person shall:

(i) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

(A) Level of formal education;

(B) Training related to the guardian ad litem's duties;

(C) Number of years' experience as a guardian ad litem;

(D) Number of appointments as a guardian ad litem and the county or counties of appointment;

(E) Criminal history, as defined in RCW 9.94A.030; and

(F) Evidence of the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapters 11.88 and 11.92 RCW.

The written statement of qualifications shall include a statement of the number of times the guardian ad litem has been removed for failure to perform his or her duties as guardian ad litem; and

(ii) Complete the model training program as described in (d) of this subsection.

(c) The background and qualification information shall be updated annually.

(d) The department of social and health services shall convene an advisory group to develop a model guardian ad litem training program and shall update the program biennially. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, aging, legal, court administration, the Washington state bar association, and other interested parties.

(e) The superior court shall require utilization of the model program developed by the advisory group as described in (d) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(4) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, or durable powers of attorney; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship;

(f) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or

intends to take to identify and meet current and emerging needs of the incapacitated person;

(iv) A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;

(v) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(viii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(ix) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least fifteen days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her counsel, spouse, all children not residing with a notified person, those persons described in (f)(viii) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150. If the guardian ad litem needs additional time to finalize his or her report, then the guardian ad litem shall petition the court for a postponement of the hearing or, with the consent of all other parties, an extension or reduction of time for filing the report. If the hearing does not occur within sixty days of filing the petition, then upon the two-month anniversary of filing the petition and on or before the same day of each following month until the hearing, the guardian ad litem shall file interim reports summarizing his or her activities on the proceeding during that time period as well as fees and costs incurred;

(g) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated

person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

(5) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to subsection (4)(f) of this section.

(6) The parties to the proceeding may file responses to the guardian ad litem report with the court and deliver such responses to the other parties and the guardian ad litem at any time up to the second day prior to the hearing. If a guardian ad litem fails to file his or her report in a timely manner, the hearing shall be continued to give the court and the parties at least fifteen days before the hearing to review the report. At any time during the proceeding upon motion of any party or on the court's own motion, the court may remove the guardian ad litem for failure to perform his or her duties as specified in this chapter, provided that the guardian ad litem shall have five days' notice of any motion to remove before the court enters such order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out his or her duties.

(7) The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incapacitated person.

(8) The court-appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

(9) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That if no guardian or limited guardian is appointed the court may charge such fee to the petitioner or the alleged incapacitated person, or divide the fee, as it deems just; and if the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(10) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem

shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

(11) The guardian ad litem shall appear in person at all hearings on the petition unless all parties provide a written waiver of the requirement to appear.

(12) At any hearing the court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty. [1996 c 249 § 10; 1995 c 297 § 4; 1991 c 289 § 5; 1990 c 122 § 8; 1977 ex.s. c 309 § 6; 1975 1st ex.s. c 95 § 9; 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: Judgment for and settlement of claims of minors: SPR 98.16W.

Intent—1996 c 249: See note following RCW 2.56.030.

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Costs against guardian of infant plaintiff: RCW 4.84.140.

District judge, guardian ad litem if defendant minor, appointment of: RCW 12.04.150.

Execution against for costs against infant plaintiff: RCW 4.84.140.

Incapacitated persons

appearance in civil action: RCW 4.08.060.

appointment for civil actions: RCW 4.08.060.

Liability for costs against infant plaintiffs: RCW 4.84.140.

Minors, for

appearance in civil actions: RCW 4.08.050.

appointment for civil actions: RCW 4.08.050.

district court proceedings: RCW 12.04.150.

Registration of land titles, appointment for minors: RCW 65.12.145.

11.88.095 Disposition of guardianship petition. (1)

In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) When the next report of the guardian is due;

(d) Whether the guardian ad litem shall continue acting as guardian ad litem;

(e) Whether a review hearing shall be required upon the filing of the inventory;

(f) The authority of the guardian, if any, for investment and expenditure of the ward's estate; and

(g) Names and addresses of those persons described in *RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship.

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the continued validity of that medical power of attorney before appointing a guardian or limited guardian for the person. [1995 c 297 § 5; 1991 c 289 § 6; 1990 c 122 § 9.]

***Reviser's note:** RCW 11.88.090 was amended by 1996 c 249 § 10, changing subsection (5)(d) to subsection (4)(d).

Effective date—1990 c 122: See note following RCW 11.88.005.

11.88.100 Oath and bond of guardian or limited guardian. Before letters of guardianship are issued, each guardian or limited 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 or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his guardianship or limited 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 incapacitated person, or his or her property, and render and pay to such incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order, then this obligation shall be void, otherwise it shall remain in effect.

The bond shall be for the use of the incapacitated 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.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars: PROVIDED, That the guardian or limited guardian

shall swear to report to the court any changes in the total assets of the incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER, That the guardian or limited guardian shall file a yearly statement showing the monthly income of the incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of five hundred dollars per month for any three consecutive months. [1990 c 122 § 10; 1983 c 271 § 1; 1977 ex.s. c 309 § 7; 1975 1st ex.s. c 95 § 10; 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.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

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 has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court stating that such corporations hold the cash or securities subject to order of court, the court may in its discretion dispense with the bond or reduce the amount of the bond by the amount of such deposits. [1990 c 122 § 11; 1975 1st ex.s. c 95 § 11; 1965 c 145 § 11.88.105.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.88.107 When bond not required. In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: PROVIDED, That in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be waived. [1990 c 122 § 12; 1977 ex.s. c 309 § 8; 1975 1st ex.s. c 95 § 12; 1965 c 145 § 11.88.107.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

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 or limited guardians. [1975 1st ex.s. c 95 § 13; 1965 c 145 § 11.88.110. Prior: 1917 c 156 § 204; RRS § 1574; prior: Code 1881 § 1617; 1860 p 228 § 334.]

11.88.115 Notice to department of revenue. Duty of guardian to notify department of revenue; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.88.120 Procedure on removal or death of guardian or limited guardian—Delivery of estate to successor. (1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

(5) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court. [1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 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.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.125 Standby limited guardian or limited guardian. (1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person, shall file in writing with the court, a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal

incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(g). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(2) Letters of guardianship shall be issued to the standby guardian or limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 as now or hereafter amended. The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 through 11.88.110 as now or hereafter amended shall apply to standby guardians and limited guardians.

(3) In addition to the powers of a standby limited guardian or guardian as noted in subsection (1) of this section, the standby limited guardian or guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in RCW 11.92.040 as now or hereafter amended, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. [1991 c 289 § 8; 1990 c 122 § 15; 1979 c 32 § 1; 1977 ex.s. c 309 § 10; 1975 1st ex.s. c 95 § 6.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.130 Transfer of jurisdiction and venue. The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian, limited guardian, or incapacitated person and such notice to an alleged incapacitated person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incapacitated person 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 or limited 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. [1990 c 122 § 16; 1975 1st ex.s. c 95 § 15; 1965 c 145 § 11.88.130. Prior: 1955 c 45 § 1.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.88.140 Termination of guardianship or limited guardianship. (1) **TERMINATION WITHOUT COURT ORDER.** A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;

(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) **TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION.** A guardianship for the benefit of a minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree

terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING A
 DECLARATION OF COMPLETION
 OF GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the day of, 19. . . ; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

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

DATED this day of, 19. . .

 Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) **TERMINATION ON COURT ORDER.** A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within thirty days of the date of termination, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under RCW 11.92.043(2).

(4) **EFFECT OF TERMINATION.** When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian

or limited guardian cease, except that a guardian or limited 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 incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates. [1991 c 289 § 9; 1990 c 122 § 17; 1977 ex.s. c 309 § 11; 1975 1st ex.s. c 95 § 16; 1965 c 145 § 11.88.140.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Procedure on removal or death of guardian or limited guardian: RCW 11.88.120.

Settlement of estate upon termination: RCW 11.92.053.

11.88.150 Administration of deceased incapacitated person's estate. (1) Upon the death of an incapacitated person, a guardian or limited guardian of the estate shall have authority to disburse or commit those funds under the control of the guardian or limited guardian as are prudent and within the means of the estate for the disposition of the deceased incapacitated person's remains. Consent for such arrangement shall be secured according to RCW 68.50.160. If no person authorized by *RCW 68.50.150 accepts responsibility for giving consent, the guardian or limited guardian of the estate may consent, subject to the provisions of this section and to the known directives of the deceased incapacitated person. Reasonable financial commitments made by a guardian or limited guardian pursuant to this section shall be binding against the estate of the deceased incapacitated person.

(2) Upon the death of an incapacitated person intestate the guardian or limited 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 incapacitated person without further letters unless within forty days after death of the incapacitated person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his letters of guardianship or limited guardianship, he shall petition the court for an order transferring the guardianship or limited 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 was assigned to the guardianship or limited guardianship proceeding. The guardian or limited 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 or limited guardian's final account. This notice shall be given and published in the manner provided in chapter 11.40 RCW. 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 or limited 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 incapacitated person with the consent of the surety. If letters of administration are granted upon petition filed within forty days after the death of the incapacitated person, the personal representative shall supersede the guardian or limited 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. [1990 c 122 § 18; 1977 ex.s. c 309 § 12; 1975 1st ex.s. c 95 § 17; 1965 c 145 § 11.88.150.]

***Reviser's note:** The reference to RCW 68.50.150 appears to be erroneous. RCW 68.50.160 was apparently intended.

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Settlement of estate upon termination: RCW 11.92.053.

11.88.160 Guardianships involving veterans. For guardianships involving veterans see chapter 73.36 RCW. [1990 c 122 § 13.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Chapter 11.92

GUARDIANSHIP—POWERS AND DUTIES OF GUARDIAN OR LIMITED GUARDIAN

Sections

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- 11.92.190 Detention of person in residential placement facility against will prohibited—Effect of court order—Service of notice of residential placement.

Veterans: RCW 73.04.140.

11.92.010 Guardians or limited guardians under court control—Legal age. Guardians or limited 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. [1975 1st ex.s. c 95 § 18; 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 persons deemed to be of full age: RCW 26.28.020.

Termination of guardianship or limited 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 the incapacitated person, whether they constitute liabilities of the incapacitated person which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incapacitated person or his or her 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 the guardian's personal liability for his or her 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 (a) the expenses of administration including guardian's fees, attorneys' fees, and court costs; (b) prior claims for the care, maintenance and education of the incapacitated person and of the person's dependents over other claims. Subject to court orders limiting such powers, a limited guardian of an estate shall have the same authority to pay claims.

(2) **CLAIMS MAY BE PRESENTED.** Any person having a claim against the estate of an incapacitated person, or against the guardian of his or her 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. After ten days' notice to a guardian or limited guardian, a hearing on the claim shall be held, at which upon proof thereof and after consideration of any defenses or objections by the guardian, the court may enter 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. [1990 c 122 § 19; 1975 1st ex.s. c 95 § 19; 1965 c 145 § 11.92.035.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Actions against guardian: RCW 11.92.060.

Claims against estate of deceased incompetent or disabled person: RCW 11.88.150.

Disbursement for claims on termination of guardianship or limited guardianship: RCW 11.88.140.

11.92.040 Duties of guardian or limited guardian in general. It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(5) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to

investment of trust estates by trustees as provided in chapter 11.100 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 or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

(6) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person: PROVIDED, HOWEVER, That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited 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 incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her 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 an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof. [1991 c 289 § 10; 1990 c 122 § 20; 1985 c 30 § 9. Prior: 1984 c 149 § 12; 1979 c 32 § 2; 1977 ex.s. c 309 § 13; 1975 1st ex.s. c 95 § 20; 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.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.
Compulsory school attendance law, duty to comply with: RCW 28A.225.010.

Disabled person, defined: RCW 11.88.010.

11.92.043 Additional duties. It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's

ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

(a) The address and name of the incapacitated person and all residential changes during the period;

(b) The services or programs which the incapacitated person receives;

(c) The medical status of the incapacitated person;

(d) The mental status of the incapacitated person;

(e) Changes in the functional abilities of the incapacitated person;

(f) Activities of the guardian for the period;

(g) Any recommended changes in the scope of the authority of the guardian;

(h) The identity of any professionals who have assisted the incapacitated person during the period.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

(a) Therapy or other procedure which induces convulsion;

(b) Surgery solely for the purpose of psychosurgery;

(c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.370.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously

approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040. [1991 c 289 § 11; 1990 c 122 § 21.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.050 Intermediate accounts—Hearing—Order.

(1) Upon the filing of any intermediate guardianship or limited guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian or limited guardian may petition the court for an order settling his or her account with regard to any receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of the 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 the petition and require the service of the petition and a notice of the hearing as provided in RCW 11.88.040 as now or hereafter amended; and, in the event a hearing is ordered, the court may also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian or limited guardian of the estate and to advise the court thereon at the hearing, in writing. At the hearing on the report of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account. If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after the incapacitated person attains his or her majority any such interim account may be challenged by the incapacitated person on the ground of fraud.

(2) The procedure established in subsection (1) of this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043. [1995 c 297 § 6; 1990 c 122 s 23; 1975 1st ex.s. c 95 s 21; 1965 c 145 s 11.92.050. Prior: 1943 c 29 s 1; Rem. Supp. 1943 s 1575-1.]

Effective date—1990 c 122: See note following RCW 11.88.005

11.92.053 Settlement of estate upon termination.

Within ninety days after the termination of a guardianship for any reason, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account as filed in accordance with RCW 11.92.040(2) with regard to any receipts, expenditures, and investments made and acts done by the guardian to the date of the termination. Upon the filing of the petition, the court shall set a date for the hearing of the petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to the petition or may appear at the time and place fixed for the hearing thereof and present his or her 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, and the court may appoint a guardian ad litem to review the report.

At the hearing on the petition of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving the account, and the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. However, within one year after the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud. [1995 c 297 § 7; 1990 c 122 § 24; 1965 c 145 § 11.92.053.]

Effective date—1990 c 122: See note following RCW 11.88.005.

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 or limited guardian, it shall appear to the court that said guardian or limited 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 or limited 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 or limited 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 or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the incapacitated person in any amount, said court may thereupon enter final judgment against said guardian or limited 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. [1990 c 122 § 25; 1975 1st ex.s. c 95 § 22; 1965 c 145 § 11.92.056.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.060 Guardian to represent incapacitated person—Compromise of claims—Service of process. (1) **GUARDIAN MAY SUE AND BE SUED.** When there is a guardian of the estate, all actions between the incapacitated person or the guardian and third persons in which it is sought to charge or benefit the estate of the incapacitated person shall be prosecuted by or against the guardian of the estate as such. The guardian shall represent the interests of the incapacitated person in the action and all process shall be

served on him or her. A guardian or limited guardian of the estate shall report to the court any action commenced against the incapacitated person and shall secure court approval prior to initiating any legal action in the name of the incapacitated person.

(2) **JOINDER, AMENDMENT AND SUBSTITUTION.**

When the guardian of the estate is under personal liability for his or her own contracts and acts made and performed on behalf of the estate the guardian may be sued both as guardian and in his or her personal capacity in the same action. Misnomer or the bringing of the action by or against the incapacitated person 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 incapacitated person before the appointment of a guardian of his or her estate, such guardian when appointed may be substituted as a party for the incapacitated person. If the appointment of the guardian of the estate is terminated, his or her successor may be substituted; if the incapacitated person dies, his or her personal representative may be substituted; if the incapacitated person is no longer incapacitated the person may be substituted.

(3) **GARNISHMENT, ATTACHMENT AND EXECUTION.** When there is a guardian of the estate, the property and rights of action of the incapacitated person 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 incapacitated person or the guardian of the person's estate as such.

(4) **COMPROMISE BY GUARDIAN.** Whenever it is proposed to compromise or settle any claim by or against the incapacitated person 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 incapacitated person, may enter an order authorizing the settlement or compromise be made.

(5) **LIMITED GUARDIAN.** Limited guardians may serve and be served with process or actions on behalf of the incapacitated person, but only to the extent provided for in the court order appointing a limited guardian. [1990 c 122 § 26; 1975 1st ex.s. c 95 § 23; 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.

Effective date—1990 c 122: See note following RCW 11.88.005.

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 or limited 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 the incapacitated person for the purpose of paying debts or for the care, support and education of the incapacitated person, or to redeem any property of the incapacitated person'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. [1990 c 122 § 27; 1975 1st ex.s. c 95 § 24; 1965 c 145 § 11.92.090. Prior: 1917 c 156 § 212; RRS § 1582; prior: Code 1881 § 1620; 1855 p 17 § 14.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.096 Guardian access to certain held assets.

(1) All financial institutions as defined in RCW 30.22.040(12), all insurance companies holding a certificate of authority under chapter 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW 21.20.005 (hereafter individually and collectively referenced as "institution") shall provide the guardian access and control over the asset(s) described in (a)(vii) of this subsection, including but not limited to delivery of the asset to the guardian, upon receipt of the following:

(a) An affidavit containing as an attachment a true and correct copy of the guardian's letters of guardianship and stating:

(i) That as of the date of the affidavit, the affiant is a duly appointed guardian with authority over assets held by the institution but owned or subject to withdrawal or delivery to a client or depositor of the institution;

(ii) The cause number of the guardianship;

(iii) The name of the incapacitated person and the name of the client or depositor (which names shall be the same);

(iv) The account or the safety deposit box number or numbers;

(v) The address of the client or depositor;

(vi) The name and address of the affiant-guardian being provided assets or access to assets;

(vii) A description of and the value of the asset or assets, or, where the value cannot be readily ascertained, a reasonable estimate thereof, and a statement that the guardian receives delivery or control of each asset solely in its capacity as guardian;

(viii) The date the guardian assumed control over the assets; and

(ix) That a true and correct copy of the letters of guardianship duly issued by a court to the guardian is attached to the affidavit; and

(b) An envelope, with postage prepaid, addressed to the clerk of the court issuing the letters of guardianship.

The affidavit shall be sent in the envelope by the institution to the clerk of the court together with a statement signed by an agent of the institution that the description of the asset set forth in the affidavit appears to be accurate, and confirming in the case of cash assets, the value of the asset.

(2) Any guardian provided with access to a safe deposit box pursuant to subsection (1) of this section shall make an inventory of the contents of the box and attach this inventory to the affidavit before the affidavit is sent to the clerk of the court and before the contents of the box are released to the guardian. Any inventory shall be prepared in the presence of an employee of the institution and the statement of the institution required under subsection (1) of this section shall include a statement executed by the employee that the

inventory appears to be accurate. The institution may require payment by the guardian of any fees or charges then due in connection with the asset or account and of a reasonable fee for witnessing preparation of the inventory and preparing the statement required by this subsection or subsection (1) of this section.

(3) Any institution to which an affidavit complying with subsection (1) of this section is submitted may rely on the affidavit without inquiry and shall not be subject to any liability of any nature whatsoever to any person whatsoever, including but not limited to the institution's client or depositor or any other person with an ownership or other interest in or right to the asset, for the reliance or for providing the guardian access and control over the asset, including but not limited to delivery of the asset to the guardian. [1991 c 289 § 13.]

11.92.100 Petition—Contents. Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to the incapacitated person that has come to the knowledge or possession of such guardian or limited guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the incapacitated person'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 incapacitated person.

(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 requested for the liquidation thereof.

(8) The age of the incapacitated person, where and with whom residing.

(9) All other facts connected with the estate and condition of the incapacitated person necessary to enable the court to fully understand the same. If there is no personal estate belonging to the incapacitated person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application. [1990 c 122 § 28; 1975 1st ex.s. c 95 § 25; 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.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.110 Sale of real estate. The order directing the sale of any of the real property of the estate of the incapacitated person 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. [1990 c 122 § 29; 1975 1st ex.s. c 95 § 26; 1965 c

145 § 11.92.110. Prior: 1917 c 156 § 214; RRS § 1524; prior: Code 1881 § 1623; 1860 p 229 § 340.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.115 Return and confirmation of sale. The guardian or limited 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 or limited 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 incapacitated person and of the person's estate. In the case of a sale by negotiation the guardians or limited 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. [1990 c 122 § 30; 1975 1st ex.s. c 95 § 27; 1965 c 145 § 11.92.115.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.120 Confirmation conclusive. No sale by any guardian or limited 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. [1975 1st ex.s. c 95 § 28; 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 guardian or limited guardian 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. [1977 ex.s. c 309 § 15; 1965 c 145 § 11.92.125.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.92.130 Performance of contracts. If any person who is bound by contract in writing to perform shall become incapacitated before making the performance, the court having jurisdiction of the guardianship or limited guardian-

ship of such property may, upon application of the guardian or limited guardian of the incapacitated person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited 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. [1990 c 122 § 31; 1975 1st ex.s. c 95 § 29; 1965 c 145 § 11.92.130. Prior: 1923 c 142 § 5; RRS § 1585a.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.140 Court authorization for actions regarding guardianship funds. The court, upon the petition of a guardian of the estate of an incapacitated person other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96 RCW, may authorize the guardian to take any action, or to apply funds not required for the incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incapacitated person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incapacitated person's estate which may extend beyond the incapacitated person's disability or life, the establishment of custodianships for the benefit of a minor under *chapter 11.93 RCW, the Washington uniform transfers to minors act, the exercise of options of the incapacitated person to purchase securities or other property, the exercise of the incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incapacitated person's right to any elective share in the estate of the incapacitated person's deceased spouse, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the savings expected to accrue. The proposed action or application of funds may include gifts of the incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incapacitated person, or may be made to individuals or charities in which the incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incapacitated person

under the incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incapacitated person insofar as the intentions can be ascertained, and if the incapacitated person's intentions cannot be ascertained, the incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incapacitated person's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties. [1991 c 193 § 32; 1990 c 122 § 32; 1985 c 30 § 10. Prior: 1984 c 149 § 13.]

***Reviser's note:** Chapter 11.93 RCW was repealed by 1991 c 193 § 27, effective July 1, 1991. Chapter 11.114 RCW was apparently intended.

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

Effective date—1990 c 122: See note following RCW 11.88.005.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.92.150 Request for special notice of proceedings.

At any time after the issuance of letters of guardianship in the estate of any person and/or incapacitated person, any person interested in the estate, or in the incapacitated person, or any relative of the incapacitated 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 the guardian or limited guardian, or upon the attorney for the guardian or limited guardian, and file with the clerk of the court where the guardianship or limited guardianship of the person and/or estate is pending, a written request stating the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide copies of all documents filed with the court and advance notice of his or her application for court approval of any action in the guardianship.

The request for special written notice shall designate the name, address and post office address of the person upon whom the notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with the designation unless and until a new designation has been made.

When any account, report, petition, or proceeding is filed in the estate of which special written notice is requested, the court shall fix a time for hearing which shall allow at least ten days for service of the notice before the hearing; and notice of the hearing shall be served upon the person designated in the written request at least ten days before the date fixed for the hearing. The service may be made by leaving a copy with the person designated, or that person's authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place

designated. [1990 c 122 § 33; 1985 c 30 § 11. Prior: 1984 c 149 § 14; 1975 1st ex.s. c 95 § 30; 1969 c 18 § 1; 1965 c 145 § 11.92.150; prior: 1925 ex.s. c 104 § 1; RRS § 1586-1.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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 as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any incapacitated person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian or limited 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. [1990 c 122 § 34; 1975 1st ex.s. c 95 § 31; 1965 c 145 § 11.92.160. Prior: 1925 ex.s. c 104 § 2; RRS § 1586-2.]

Effective date—1990 c 122: See note following RCW 11.88.005.

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

11.92.170 Removal of property of nonresident incapacitated person. Whenever it is made to appear that it would be in the best interests of the incapacitated person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the incapacitated person appointed in another jurisdiction, or to a person or institution having similar authority with respect to the incapacitated person. [1990 c 122 § 35; 1977 ex.s. c 309 § 16; 1975 1st ex.s. c 95 § 32; 1965 c 145 § 11.92.170. Prior: 1917 c 156 § 217; RRS § 1587; prior: Code 1881 § 1628; 1873 p 320 § 323.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.92.180 Compensation and expenses of guardian or limited guardian—Attorney's fees—Department of social and health services clients paying part of costs—Rules. A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her 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 limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. Where the incapacitated person is a department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of residential or supportive services then the department shall be entitled to notice of proceedings as described in RCW 11.92.150. The amount of guardianship fees and additional compensation for administrative costs shall not exceed the amount allowed by the department of social and health services by rule. [1995 c 297 § 8; 1994 c 68 § 1; 1991 c 289 § 12; 1990 c 122 § 36; 1975 1st ex.s. c 95 § 33; 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.*

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.185 Concealed or embezzled property. 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 or her possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of incapacitated persons subject to administration under this title. [1990 c 122 § 37; 1975 1st ex.s. c 95 § 34; 1965 c 145 § 11.92.185.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.190 Detention of person in residential placement facility against will prohibited—Effect of court order—Service of notice of residential placement. No residential treatment facility which provides nursing or other care may detain a person within such facility against their will. Any court order, other than an order issued in accordance with the involuntary treatment provisions of chapters 10.77, 71.05, and 72.23 RCW, which purports to authorize such involuntary detention or purports to authorize a guardian or limited guardian to consent to such involuntary detention on behalf of an incapacitated person shall be void and of no force or effect. This section does not apply to the detention of a minor as provided in chapter 70.96A or 71.34 RCW.

Nothing in this section shall be construed to require a court order authorizing placement of an incapacitated person in a residential treatment facility if such order is not otherwise required by law: PROVIDED, That notice of any residential placement of an incapacitated person shall be served, either before or after placement, by the guardian or limited guardian on such person, the guardian ad litem of record, and any attorney of record. [1996 c 249 § 11; 1977 ex.s. c 309 § 14.]

Intent—1996 c 249: See note following RCW 2.56.030.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Chapter 11.94

POWER OF ATTORNEY

Sections

- 11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument.
- 11.94.020 Effect of death, disability, or incompetence of principal—Acts without knowledge.
- 11.94.030 Banking transactions.
- 11.94.040 Release from liability for reliance on power of attorney document.
- 11.94.043 Durable power of attorney—Revocation or termination.
- 11.94.046 Durable power of attorney—Validity.
- 11.94.050 Attorney or agent granted principal's powers—Powers to be specifically provided for—Transfer of resources by principal's attorney or agent.
- 11.94.060 Conveyance or encumbrance of homestead.
- 11.94.070 Limitations on powers to benefit attorneys-in-fact.
- 11.94.900 Application of 1984 c 149 §§ 26 through 31 as of January 1, 1985.

11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument. (1) Whenever a principal designates another as his or her 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 the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided 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 the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. 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 the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. Unless he or she is the spouse, or adult

child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility where the principal resides or receives care. This authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5) (a) through (c). [1995 c 297 § 9; 1989 c 211 § 1; 1985 c 30 § 25. Prior: 1984 c 149 § 26; 1974 ex.s. c 117 § 52.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 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 11.94.010, 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 the principal's heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney in fact, or agent, stating that the attorney 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. [1985 c 30 § 26. Prior: 1984 c 149 § 27; 1977 ex.s. c 234 § 27; 1974 ex.s. c 117 § 53.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

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

11.94.030 Banking transactions. If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney in fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney in fact or agent has all the powers the principal would have if alive and competent, then that language, notwithstanding chapter 30.22 RCW, includes the authority (1) to deposit and to make payments from any account in a financial institution, as defined in RCW 30.22.040, in the name of the principal, and (2) to enter any safe deposit box to which the principal has a right of access, subject to any

contrary provision in any agreement governing the safe deposit box. [1985 c 30 § 27. Prior: 1984 c 149 § 28.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.040 Release from liability for reliance on power of attorney document. Any person acting without negligence and in good faith in reasonable reliance on a power of attorney shall not incur any liability thereby. Unless the document contains a time limit, the length of time which has elapsed from its date of execution shall not prevent a party from reasonably relying on the document. Unless the document contains a requirement that it be filed for record to be effective, a person shall place reasonable reliance on it regardless of whether it is so filed. [1985 c 30 § 28. Prior: 1984 c 149 § 29.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.043 Durable power of attorney—Revocation or termination. The durable power of attorney provided for under this chapter shall continue in effect until revoked or terminated by the principal, by a court-appointed guardian, or by court order. [1989 c 211 § 2.]

11.94.046 Durable power of attorney—Validity. (1) A durable power of attorney executed pursuant to chapter 11.94 RCW before July 23, 1989, that specifically authorizes an attorney-in-fact to make decisions relating to the health care of the principal shall be deemed valid, except for the exemptions provided for in RCW 11.94.010(3).

(2) Nothing in this chapter affects the validity of a decision made under a durable power of attorney executed pursuant to chapter 11.94 RCW before July 23, 1989. [1989 c 211 § 3.]

11.94.050 Attorney or agent granted principal's powers—Powers to be specifically provided for—Transfer of resources by principal's attorney or agent.

(1) Although a designated attorney in fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney in fact or agent shall have all the powers the principal would have if alive and competent, the attorney in fact or agent shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's wills, codicils, life insurance beneficiary designations, employee benefit plan beneficiary designations, trust agreements, community property agreements; to make any gifts of property owned by the principal; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust, or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney in fact or agent from making any transfer of

resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy. [1989 c 87 § 1; 1985 c 30 § 29. Prior: 1984 c 149 § 30.]

Effective dates—1989 c 87: "(1) Sections 7 and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

(2) Sections 1 through 5 of this act shall take effect October 1, 1989." [1989 c 87 § 9.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.060 Conveyance or encumbrance of homestead. If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney in fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney in fact or agent has all the powers the principal would have if alive and competent, then these powers include the right to convey or encumber the principal's homestead. [1985 c 30 § 30. Prior: 1984 c 149 § 31.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.070 Limitations on powers to benefit attorneys-in-fact. (1) The restrictions in RCW 11.95.100 through 11.95.150 on the power of a person holding a power of appointment apply to attorneys-in-fact holding the power to appoint to or for the benefit of the powerholder.

(2) This section applies retroactively to July 25, 1993. [1994 c 221 § 67.]

Effective dates—1994 c 221: "(1) Except as provided in section 74 of this act, sections 1 through 72 of this act shall take effect January 1, 1995.

(2) *Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 221 § 75.]

***Reviser's note:** "Section 3 of this act" is erroneous. This reference was apparently intended to be to section 67. The error arose in the renumbering of sections in the engrossing of amendments to Substitute House Bill No. 2270 (1994 c 221).

11.94.900 Application of 1984 c 149 §§ 26 through 31 as of January 1, 1985. *Sections 26 through 31, chapter 149, Laws of 1984 apply as of January 1, 1985, to all existing or subsequently executed instruments but shall not apply to any instrument the terms of which expressly or impliedly make those sections inapplicable. [1985 c 30 § 140.]

***Reviser's note:** "Sections 26 through 31, chapter 149, Laws of 1984" were coded as RCW 11.94.010 through 11.94.060 and were amended in 1985.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.95
POWERS OF APPOINTMENT

Sections

- 11.95.010 Releases.
- 11.95.020 Releases—Partial releases.
- 11.95.030 Releases—Delivery.
- 11.95.040 Releases—Effect of RCW 11.95.010 through 11.95.050 on prior releases.
- 11.95.060 Exercise of powers of appointment.
- 11.95.070 Application of chapter—Application of 1984 c 149 to powers of appointment.
- 11.95.100 Exercise of power in favor of holder—Limitations.
- 11.95.110 Exercise of power in favor of holder—Disregard of provision conferring absolute or similar power—Power of removal.
- 11.95.120 Exercise of power in favor of holder—Income under marital deduction—Spousal power of appointment.
- 11.95.130 Exercise of power in favor of holder—Inference of law.
- 11.95.140 Exercise of power in favor of holder—Applicability.
- 11.95.150 Exercise of power in favor of holder—Cause of action.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.95.010 Releases. Any power exercisable by deed, will, or otherwise, other than a power in trust which is imperative, is releasable, either with or without consideration, by written instrument signed by the holder and delivered as hereinafter provided. [1985 c 30 § 31. Prior: 1984 c 149 § 33; 1955 c 160 § 1. Formerly RCW 64.24.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.020 Releases—Partial releases. A power which is releasable may be released with respect to the whole or any part of the property subject to the power and may also be released in such manner as to reduce or limit the persons or objects, or classes of persons or objects, in whose favor the powers would otherwise be exercisable. A release of a power shall not be deemed to make imperative a power which was not imperative prior to the release, unless the instrument of release expressly so provides. [1985 c 30 § 32. Prior: 1984 c 149 § 34; 1955 c 160 § 2. Formerly RCW 64.24.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.030 Releases—Delivery. (1) In order to be effective as a release of a power, the instrument of release must be delivered to any trustee or co-trustee of the property, and the person holding the property, to which the power relates.

(2) In addition to the delivery required under subsection (1) of this section, a copy of the instrument of release may be published in a legal newspaper of general circulation in the county in which all or the greatest portion of the property is located at least once within thirty days of the delivery required under subsection (1) of this section, which shall from the time of publication constitute notice of the release to all other persons. [1995 c 91 § 1; 1985 c 30 § 33. Prior:

1984 c 149 § 35; 1955 c 160 § 3. Formerly RCW 64.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.040 Releases—Effect of RCW 11.95.010 through *11.95.050 on prior releases. The enactment of RCW 11.95.010 through *11.95.050 shall not be construed to impair the validity of any release heretofore made which was otherwise valid when executed. [1985 c 30 § 34. Prior: 1984 c 149 § 36; 1955 c 160 § 4. Formerly RCW 64.24.040.]

***Reviser's note:** RCW 11.95.050 was repealed by 1995 c 91 § 2.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.060 Exercise of powers of appointment. (1) The holder of a testamentary or lifetime power of appointment may exercise the power by appointing property outright or in trust and may grant further powers to appoint. The powerholder may designate the trustee, powers, situs, and governing law for property appointed in trust.

(2) The holder of a testamentary power may exercise the power only by the powerholder's last will, signed before or after the effective date of the instrument granting the power, that manifests an intent to exercise the power. Unless the person holding the property subject to the power has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised. The person holding the property shall not incur liability to anyone for transfers so made if the person had no knowledge that the power had been exercised and had made a reasonable effort to determine if the power had been exercised. A testamentary residuary clause which does not manifest an intent to exercise a power is not deemed the exercise of a testamentary power.

(3) The holder of a lifetime power of appointment shall exercise that power only by delivering a written instrument, signed by the holder, to the person holding the property subject to the power. If the holder conditions the distribution of the appointed property on a future event, the written instrument may be revoked in the same manner at any time before the property becomes distributable upon occurrence of the event specified, except that any contrary provisions in the written instrument exercising the power, including provisions stating the exercise of the power is irrevocable, shall be controlling. If the written instrument is revoked, the holder of the power may reappoint the property that was appointed in the instrument. In the absence of signing and delivery of such a written instrument, a lifetime power is not deemed exercised. [1989 c 33 § 1; 1985 c 30 § 36. Prior: 1984 c 149 § 38.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.070 Application of chapter—Application of 1984 c 149 to powers of appointment. (1) This chapter does not apply to any power as trustee described in and subject to RCW 11.98.019.

(2) *Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984 and the 1984 recodification of RCW 64.24.050 as RCW 11.95.050 apply as of January 1, 1985, to all existing or subsequently created powers of appointment, but not to any power of appointment that expressly or by necessary implication make[s] those 1984 changes inapplicable. [1985 c 30 § 37. Prior: 1984 c 149 § 39.]

*Reviser's note: "Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984" were codified as RCW 11.95.010 through 11.95.040, 11.95.060, and 11.95.070. RCW 11.95.060 and 11.95.070 were amended in 1985.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.100 Exercise of power in favor of holder—Limitations. If the standard governing the exercise of a lifetime or a testamentary power of appointment does not clearly indicate that a broader or more restrictive power of appointment is intended, the holder of the power of appointment may exercise it in his or her favor only for his or her health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under the section. [1993 c 339 § 7.]

Severability—1993 c 339: See note following RCW 11.98.200.

11.95.110 Exercise of power in favor of holder—Disregard of provision conferring absolute or similar power—Power of removal. If the holder of a lifetime or testamentary power of appointment may exercise the power in his or her own favor only for his or her health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a provision of the instrument creating the power of appointment that purports to confer "absolute," "sole," "complete," "conclusive," or a similar discretion shall be disregarded in the exercise of that power in favor of the holder, and that power may then only be exercised reasonably and in accordance with the ascertainable standards set forth in RCW 11.95.100 and this section. A person who has the right to remove or replace a trustee does not possess nor may the person be deemed to possess, by virtue of having that right, the power of the trustee who is subject to removal or to replacement. [1993 c 339 § 8.]

Severability—1993 c 339: See note following RCW 11.98.200.

11.95.120 Exercise of power in favor of holder—Income under marital deduction—Spousal power of appointment. Notwithstanding any provision of RCW 11.95.100 through 11.95.150 seemingly to the contrary, RCW 11.95.100 through 11.95.150 do not limit or restrict

the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, RCW 11.95.100 through 11.95.150 do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections. [1993 c 339 § 9.]

Severability—1993 c 339: See note following RCW 11.98.200.

11.95.130 Exercise of power in favor of holder—Inference of law. RCW 11.95.100 through 11.95.150 do not raise an inference that the law of this state prior to July 25, 1993, was different than contained in RCW 11.95.100 through 11.95.150. [1993 c 339 § 10.]

Severability—1993 c 339: See note following RCW 11.98.200.

11.95.140 Exercise of power in favor of holder—Applicability. (1)(a) RCW 11.95.100 and 11.95.110 respectively apply to a power of appointment created:

(i) Under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed after July 25, 1993, unless the terms of the instrument refer specifically to RCW 11.95.100 or 11.95.110 respectively and provide expressly to the contrary; or

(ii) Under a testamentary trust, trust agreement, or declaration of trust executed before July 25, 1993, unless:

(A) The trust is revoked, or amended to provide otherwise, and the terms of any amendment specifically refer to RCW 11.95.100 or 11.95.110, respectively, and provide expressly to the contrary;

(B) All parties in interest, as defined in RCW 11.98.240(3), elect affirmatively, in the manner prescribed in RCW 11.98.240(4), not to be subject to the application of this subsection. The election must be made by the later of September 1, 2000, or three years after the date on which the trust becomes irrevocable; or

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under RCW 11.96.070 obtains a judicial determination, under chapter 11.96 RCW, that the application of this subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

(b) Notwithstanding (a) of this subsection, for the purposes of this section a codicil to a will, an amendment to a trust, or an amendment to another instrument that created the power of appointment in question shall not be deemed to cause that instrument to be executed after July 25, 1993, unless the codicil or amendment clearly shows an intent to have RCW 11.95.100 or 11.95.110 apply.

(2) Notwithstanding subsection (1) of this section, RCW 11.95.100 through 11.95.150 shall apply to a power of appointment created under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instru-

ment executed prior to July 25, 1993, if the person who created the power of appointment had on July 25, 1993, the power to revoke, amend, or modify the instrument creating the power of appointment, unless:

(a) The terms of the instrument specifically refer to RCW 11.95.100 or 11.95.110 respectively and provide expressly to the contrary; or

(b) The person creating the power of appointment was not competent, on July 25, 1993, to revoke, amend, or modify the instrument creating the power of appointment and did not regain his or her competence to revoke, amend, or modify the instrument creating the power of appointment on or before his or her death or before the time at which the instrument could no longer be revoked, amended, or modified by the person. [1997 c 252 § 74; 1993 c 339 § 11.]

Severability—1993 c 339: See note following RCW 11.98.200.

11.95.150 Exercise of power in favor of holder—Cause of action. RCW 11.95.100 through 11.95.140 neither create a new cause of action nor impair an existing cause of action that, in either case, relates to a power that was exercised before July 25, 1993. RCW 11.95.100 through 11.95.140 neither create a new cause of action nor impair an existing cause of action that in either case relates to a power proscribed, limited, or qualified under RCW 11.95.100 through 11.95.140. [1993 c 339 § 12.]

Severability—1993 c 339: See note following RCW 11.98.200.

Chapter 11.96

JURISDICTION AND PROCEEDINGS

Sections

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- 11.96.901 Severability—1985 c 31.
- 11.96.902 Short title—Washington trust act of 1984.
- 11.96.903 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985.

11.96.009 Original jurisdiction in probate, administration, matters relating to trusts—Powers of courts. (1) The superior court shall have original subject-matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances, including without limitation:

(a) When a resident of the state dies; or

(b) When a nonresident of the state dies in the state; or

(c) When a nonresident of the state dies outside the state.

(2) The superior court shall have original subject-matter jurisdiction over trusts and matters relating to trusts.

(3) The superior courts in the exercise of their jurisdiction of matters of trusts and estates shall have the power to probate or refuse to probate wills, appoint personal representatives, administer and settle the affairs and the estates of incapacitated, missing, or deceased individuals including but not limited to decedents' estates only containing nonprobate assets, administer and settle matters that relate to nonprobate assets and arise under chapter 11.18 or 11.42 RCW, administer and settle all trusts and trust matters, 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. [1994 c 221 § 51; 1985 c 31 § 2. Prior: 1984 c 149 § 41; 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 11.02.010 and 11.16.010.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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

Judicial transfer of trust assets or administration, requirements: RCW 11.98.055.

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

11.96.020 Legislative intent—Powers of courts when law inapplicable, insufficient, or doubtful. It is the intention of the legislature that the courts shall have full and ample power and authority under this title to:

(1) Administer and settle the affairs and the estates of all incapacitated, missing, and deceased persons in accordance with this title;

(2) Administer and settle all trusts and trust matters; and

(3) Administer and settle matters arising with respect to nonprobate assets under chapters 11.18 and 11.42 RCW.

If the provisions of this title with reference to the administration and settlement of such matters should in any cases and under any circumstances be inapplicable, 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 matters may be administered and settled by the court. [1994 c 221 § 52; 1985 c 31 § 3. Prior: 1984 c 149 § 42; 1965 c 145 § 11.02.020; prior: 1917 c 156 § 219; RRS § 1589. Formerly RCW 11.02.020 and 11.16.020.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.030 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. [1985 c 31 § 4. Prior: 1965 c 145 § 11.02.030; prior: 1917 c 156 § 220; RRS § 1590. Formerly RCW 11.02.030 and 11.16.030.]

11.96.040 Situs of trust. Unless otherwise provided in the instrument creating the trust, the situs of a trust is the place where the principal place of administration of the trust is located. As used in this section, the "principal place of administration of the trust" is the trustee's usual place of business where the day-to-day records pertaining to the trust are kept or the trustee's residence if the trustee has no such place of business. [1985 c 31 § 5. Prior: 1984 c 149 § 45.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.050 Venue in proceedings involving probate, administration, disposition, or trust matters. For purposes of venue in proceedings involving: The probate of wills; the administration and disposition of estates of incapacitated, missing, or deceased individuals, including but not limited to estates only containing nonprobate assets; or trusts and trust matters, the following shall apply:

(1) Proceedings under Title 11 RCW pertaining to trusts shall be commenced:

(a) In the superior court of the county in which the situs of the trust is located as provided in RCW 11.96.040; or

(b) With respect to testamentary trusts, in the superior court of the county where letters testamentary were granted to a personal representative or, where no such letters have been granted to a personal representative, then in any county where letters testamentary could have been granted in accordance with subsection (2) of this section.

(2) Wills shall be proven, letters testamentary or of administration granted, and other proceedings pertaining to the probate of wills, the administration and disposition of estates including but not limited to estates containing only nonprobate assets under Title 11 RCW shall be commenced:

(a) In the county in which the decedent was a resident at the time of death;

(b) In the county in which the decedent died, or in which any part of the estate may be, if the decedent was not a resident of this state;

(c) In the county in which any part of the estate may be, if the decedent died out-of-state and was not a resident of this state at the time of death; or

(d) In the county in which any nonprobate asset may be, if the decedent died out-of-state, was not a resident of this state at the time of death, and left no assets subject to probate administration in this state.

(3) No action undertaken is defective or invalid because of improper venue if the court has jurisdiction of the matter. [1994 c 221 § 53; 1985 c 31 § 6. Prior: 1984 c 149 § 46.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.060 Statute of limitations. (1) Any action against the trustee of an express trust, excluding those trusts excluded from the definition of express trusts under RCW 11.98.009, but including all express trusts, whenever executed, for any breach of fiduciary duty, must be brought within three years from the earlier of (a) the time the alleged breach was discovered or reasonably should have been discovered, (b) the discharge of a trustee from the trust as provided in RCW 11.98.041, or (c) the time of termination of the trust or the trustee's repudiation of the trust.

(2) Any action by an heir, legatee, or other interested party, to whom proper notice was given if required, against a personal representative for alleged breach of fiduciary duty must be brought prior to discharge of the personal representative.

(3) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of any statute of limitations stated in subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under chapter 11.96 RCW, is not tolled if the unascertained or unborn heir, beneficiary, or class of persons, or minor or incapacitated person, or person identified in RCW 11.96.170(2) or 11.96.180 whose identity or address is unknown, had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding. [1994 c 221 § 54; 1985 c 31 § 7. Prior: 1984 c 149 § 47.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.070 Persons entitled to judicial proceedings for declaration of rights or legal relations. (1) A person with an interest in or right respecting the administration, settlement, or disposition of an interest in a trust or in the estate of an incapacitated, missing, or deceased person may have a judicial proceeding for the declaration of rights or legal relations under this title including but not limited to the following:

(a) The ascertaining of any class of creditors, devisees, legatees, heirs, next of kin, or others;

(b) The ordering of the personal representatives or trustees to do or abstain from doing any particular act in their fiduciary capacity;

(c) The determination of any question arising in the administration of the estate or trust, including without limitation questions of construction of wills and other writings;

(d) The grant to the personal representatives or trustees of any necessary or desirable powers not otherwise granted in the instrument or given by law that the court determines are not inconsistent with the provisions or purposes of the will or trust;

(e) The modification of the will or the trust instrument in the manner required to qualify the gift thereunder for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by

final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest;

(f) The modification of the will or the trust instrument in the manner required to qualify any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code as required by final regulations and rulings of the United States treasury department or internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest;

(g) The determination of the persons entitled to notice under RCW 11.96.100 and 11.96.110 for the purposes of any judicial proceeding under this subsection (1) and for the purposes of an agreement under RCW 11.96.170; or

(h) The resolution of any other matter that arises under this title and references this section.

(2) Any person with an interest in or right respecting the administration of a nonprobate asset under this title may have a judicial proceeding for the declaration of rights or legal relations under this title with respect to the nonprobate asset, including without limitation the following:

(a) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(b) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(c) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(d) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(e) The determination of the persons entitled to notice under RCW 11.96.100 and 11.96.110 for the purposes of any judicial proceeding under this subsection (2) and for the purposes of an agreement under RCW 11.96.170; and

(f) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title.

(3) The provisions of this chapter apply to disputes arising in connection with estates of incapacitated persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The provisions of this chapter shall not supersede the otherwise applicable provisions and procedures of chapter 11.24, 11.28, 11.40, 11.42, 11.56, or 11.60 RCW with respect to any rights or legal obligations that are subject to those chapters.

(4) For the purposes of this section, "a person with an interest in or right respecting the administration, settlement, or disposition of an interest in a trust or in the estate of an incapacitated, missing, or deceased person" includes but is not limited to:

(a) The trustor if living, trustee, beneficiary, or creditor of a trust and, for a charitable trust, the attorney general if acting within the powers granted under RCW 11.110.120;

(b) The personal representative, heir, devisee, legatee, and creditor of an estate;

(c) The guardian, guardian ad litem, and ward of a guardianship, and a creditor of an estate subject to a guardianship; and

(d) Any other person with standing to sue with respect to any of the matters for which judicial proceedings are authorized in subsection (1) of this section.

(5) For the purposes of this section, "any person with an interest in or right respecting the administration of a nonprobate asset under this title" includes but is not limited to:

(a) The notice agent, the resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW;

(b) The recipient of the nonprobate asset with respect to any matter arising under this title;

(c) Any other person with standing to sue with respect to any matter for which judicial proceedings are authorized in subsection (2) of this section; and

(d) The legal representatives of any of the persons named in this subsection. [1997 c 252 § 77; 1994 c 221 § 55; 1990 c 179 § 1; 1988 c 29 § 6; 1985 c 31 § 8. Prior: 1984 c 149 § 48.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.080 Petition for judicial proceeding—Hearing—Form and content of notice. Unless rules of court or a provision of this title requires otherwise, a judicial proceeding under RCW 11.96.070 may be commenced by petition. The court shall make an order fixing the time and place for hearing the petition. The court shall approve the form and content of the notice. Notice of hearing shall be signed by the clerk of the court. [1994 c 221 § 56; 1985 c 31 § 9. Prior: 1984 c 149 § 49.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.090 Power of clerk to fix time of hearings—Exceptions. 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 and except for the time of hearings set under RCW 11.96.080. The authority granted in this section is in addition to the authority vested in the superior courts and superior court commissioners. [1994 c 221 § 57; 1985 c 31 § 10. Prior: 1984 c 149 § 51; 1965 c 145 § 11.02.060; prior: 1947 c 54 § 1; Rem. Supp. 1947 § 1590-a. Formerly RCW 11.02.060 and 11.16.110.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.100 Notice in judicial proceedings under Title 11 RCW requiring notice. (1) Subject to RCW 11.96.110,

in all judicial proceedings under Title 11 RCW that require notice, such notice shall be personally served on or mailed to all parties to the dispute at least twenty days prior to the hearing on the petition unless a different period is provided by statute or ordered by the court under RCW 11.96.080.

(2) Proof of the service or mailing required in this section shall be made by affidavit filed at or before the hearing.

(3) For the purposes of this section:

(a) When used in connection with a judicial proceeding under RCW 11.96.070(1), "parties to the dispute" means each:

- (i) Trustor if living;
- (ii) Trustee;
- (iii) Personal representative;
- (iv) Heir;
- (v) Beneficiary including devisees, legatees, and trust beneficiaries;
- (vi) Guardian ad litem; or
- (vii) Other person

who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner, and also includes the attorney general if required under RCW 11.110.120.

(b) When used in connection with a judicial proceeding under RCW 11.96.070(2), "parties to the dispute" means each notice agent, if any, or other person, who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner, and also includes the personal representatives of the estate of the owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

(c) "Notice agent" has the meanings given in RCW 11.42.010. [1994 c 221 § 58; 1985 c 31 § 11. Prior: 1984 c 149 § 53.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.110 Notice constituting compliance with notice requirements of Title 11 RCW. Notwithstanding provisions of this chapter to the contrary, there is compliance with the requirements of Title 11 RCW for notice to the beneficiaries of, and other persons interested in, an estate, a trust, or a nonprobate asset, including without limitation all living persons who may participate in the corpus or income of the trust or estate, if notice is given as follows:

(1) If an interest in an estate, trust, or nonprobate asset has been given to persons who compose a certain class upon the happening of a certain event, notice shall be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice.

(2) If an interest in an estate, trust, or nonprobate asset has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or to persons who are, or may be, the distributees, heirs, issue, or other

kindred of that living person upon the happening of a future event, notice shall be given to that living person.

(3) Except as otherwise provided in subsection (2) of this section, if an interest in an estate, trust, or nonprobate asset has been given to a person, a class of persons, or both upon the happening of any future event, and the same interest or a share of such interest is to pass to another person, class of persons, or both, upon the happening of an additional future event, notice shall be given to the living person or persons who would take the interest upon the happening of the first event.

(4) Notice shall be given to persons who would not otherwise be entitled to notice by law if a conflict of interest involving the subject matter of the proceeding relating to an estate, trust, or nonprobate asset is known to exist between a person to whom notice is given and a person to whom notice need not be given under Title 11 RCW.

Any action taken by the court is conclusive and binding upon each person receiving actual or constructive notice in the manner provided in this section. [1994 c 221 § 59; 1985 c 31 § 12. Prior: 1984 c 149 § 54.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.120 Special notice. Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or 11.92.150. [1985 c 31 § 13. Prior: 1984 c 149 § 55.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.130 Proceeding rules—Judgments. All issues of fact in any judicial proceeding under this title shall be tried in conformity with the requirements of the rules of practice in civil actions, except as otherwise provided by statute or ordered by the court under RCW 11.96.030 or other applicable law or rules of court. The judicial proceeding may be commenced as a new action or as an action incidental to an existing judicial proceeding relating to the same trust or estate or nonprobate asset. Once commenced, the action may be consolidated with an existing proceeding or converted to a separate action upon the motion of any party for good cause shown, or by the court on its own motion. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If no jury is demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions. Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions. [1994 c 221 § 60; 1985 c 31 § 14. Prior: 1984 c 149 § 56.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.140 Costs—Attorneys' fees. Either the superior court or the court on appeal, may, in its discretion, order costs, including attorneys' fees, to be paid by any party to

the proceedings or out of the assets of the estate or trust or nonprobate asset, as justice may require. [1994 c 221 § 61; 1985 c 31 § 15. Prior: 1984 c 149 § 57.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.150 Execution upon trust income or vested remainder—Permitted, when. Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman. [1985 c 31 § 16. Prior: 1955 c 33 § 30.30.120; prior: 1951 c 226 § 1. Formerly RCW 30.30.120.]

11.96.160 Appellate review. Any interested party may seek appellate review of any final order, judgment, or decree of the court respecting any judicial proceedings under this title. The review shall be in the manner and way provided by law for appeals in civil actions. [1994 c 221 § 62; 1988 c 202 § 19; 1985 c 31 § 17. Prior: 1971 c 81 § 53; 1965 c 145 § 11.96.010; prior: 1917 c 156 § 221; RRS § 1591. Formerly RCW 11.96.010 and 11.16.040.]

Rules of court: Rules of Appellate Procedure.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—1988 c 202: See note following RCW 2.24.050.

11.96.170 Nonjudicial resolution of dispute—Written agreement—Appointment of special representative—Qualifications—Filing of agreement or memorandum—Notice—Objection. (1) If all required parties to the dispute agree as to a matter in dispute, the agreement shall be evidenced by a written agreement executed by all required parties to the dispute. Those persons may reach an agreement concerning a matter in RCW 11.96.070(1)(d) as long as those persons, rather than the court, determine that the powers to be conferred are not inconsistent with the provisions or purposes of the will or trust.

(2) If necessary, any one or more of the required parties to the dispute may petition the court for the appointment of a special representative to represent a required party to the dispute who is incapacitated by reason of being a minor or otherwise, who is yet unborn or unascertained, or whose identity or address is unknown. The special representative has authority to enter into a binding agreement under this section on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or classes are not in conflict. Those entitled to receive notice for persons or beneficiaries described in RCW 11.96.110 may enter into a binding agreement on behalf of such persons or beneficiaries.

(3) The special representative shall be a lawyer licensed to practice before the courts of this state or an individual

with special skill or training in the administration of estates, trusts, or nonprobate assets, as applicable. The special representative shall have no interest in any affected estate, trust, or nonprobate asset, and shall not be related to any personal representative, trustee, beneficiary, or other person interested in the estate, trust, or nonprobate asset. The special representative is entitled to reasonable compensation for services and, if applicable, that compensation shall be paid from the principal of the estate, trust, or nonprobate asset whose beneficiaries are represented. Upon execution of the written agreement, the special representative shall be discharged of any further responsibility with respect to the estate, trust, or nonprobate asset.

(4) The written agreement or a memorandum summarizing the provisions of the written agreement may, at the option of any of the required parties to the dispute, be filed with the court having jurisdiction over the estate, trust, nonprobate asset, or other matter affected by the agreement. The person filing the agreement or memorandum shall, within five days after the agreement or memorandum is filed with the court, mail a copy of the agreement, the summarizing memorandum if one was filed with the court, and a notice of the filing to each of the required parties to the dispute whose address is known or is reasonably ascertainable by the person. Notice shall be in substantially the following form:

CAPTION
OF CASE

NOTICE OF FILING OF
AGREEMENT OR
MEMORANDUM
OF AGREEMENT

Notice is hereby given that the attached document was filed by the undersigned in the above entitled court on the day of Unless you file a petition objecting to the agreement within 30 days of the above specified date the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the subject of the agreement.

If you file and serve a petition within the period specified, you should ask the court to fix a time and place for the hearing on the petition and provide for at least ten days' notice to all persons interested in the subject of the agreement.

DATED this . . . day of

.
(Name of person filing the agreement or memorandum with the court)

(5) Unless a required party to the dispute files a petition objecting to the agreement within thirty days after the filing of the agreement or the memorandum, the agreement will be deemed approved and will be equivalent to a final order binding on all parties to the dispute. If all required parties to the dispute waive the notice required by this section, the agreement will be deemed approved and will be equivalent to a final order binding on all such persons effective upon the date of filing.

(6) For the purposes of this section:

(a) "Matter in dispute" includes without limitation any matter listed in RCW 11.96.070 or any other matter in this title referencing this nonjudicial resolution procedure;

(b) "Parties to the dispute" has the meaning given to that term in RCW 11.96.100(3) (a) and (b), as applicable;

(c) "Required parties to the dispute" means those parties to the dispute who are entitled to notice under RCW 11.96.100 and 11.96.110, and, when used in the singular, means any one of the required parties to the dispute; and

(d) "Estate" includes the estate of a deceased, missing, or incapacitated person. [1994 c 221 § 63; 1988 c 29 § 7; 1985 c 31 § 18. Prior: 1984 c 149 § 61.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Dispute resolution procedures applicable to consolidation of trusts: RCW 11.98.080.

determination of recipient of life insurance or retirement proceeds: RCW 11.98.170.

trust gift distribution: Chapter 11.108 RCW.

11.96.180 Appointment of guardian ad litem. (1)

The court, upon its own motion or on request of any one or more of the required parties to the dispute as that term is defined in RCW 11.96.170(6)(c), at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, incapacitated, unborn, or unascertained person, or person whose identity or address is unknown, or a designated class of persons who are not ascertained or are not in being. When not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) The court-appointed guardian ad litem supersedes the special representative if so provided in the court order.

(3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW 11.96.070 with notice as provided in RCW 11.96.080, 11.96.100, and 11.96.110. [1994 c 221 § 64; 1985 c 31 § 19. Prior: 1984 c 149 § 62.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.900 Purpose—1985 c 31. The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution. [1985 c 31 § 1.]

11.96.901 Severability—1985 c 31. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 31 § 20.]

11.96.902 Short title—Washington trust act of 1984. See RCW 11.02.900.

11.96.903 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985. See RCW 11.02.901.

Chapter 11.97

EFFECT OF TRUST INSTRUMENT

Sections

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11.97.900 Application of chapter.

11.97.010 Power of trustor—Trust provisions control. The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104 RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 11.98.200 through 11.98.240 and 11.95.100 through 11.95.150. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment. [1993 c 339 § 1; 1985 c 30 § 38. Prior: 1984 c 149 § 64; 1959 c 124 § 2. Formerly RCW 30.99.020.]

Severability—1993 c 339: See note following RCW 11.98.200.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.97.900 Application of chapter. This chapter applies to the provisions of chapters 11.95, 11.98, 11.100, and 11.104 RCW and to RCW 11.106.020. [1985 c 30 § 39. Prior: 1984 c 149 § 65.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.98

TRUSTS

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11.98.009 Application of chapter. Except as provided in this section, this chapter applies to express trusts executed by the trustor after June 10, 1959, and does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, trusts created by the judgment or decree of a court not sitting in probate, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, trusts created in deposits in any financial institution pursuant to chapter 30.22 RCW, unless any such trust which is created in writing incorporates this chapter in whole or in

part. [1985 c 30 § 40. Prior: 1984 c 149 § 67; 1983 c 3 § 49; 1959 c 124 § 1. Formerly RCW 30.99.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.016 Exercise of powers by co-trustees. (1)

Any power vested in three or more trustees jointly may be exercised by a majority of such trustees; but no trustee who has not joined in exercising a power is liable to the beneficiaries or to others for the consequences of such exercise; nor is a dissenting trustee liable for the consequences of an act in which that trustee joins at the direction of the majority of the trustees, if that trustee expressed his or her dissent in writing to each of the co-trustees at or before the time of such joinder.

(2) Where two or more trustees are appointed to execute a trust and one or more of them for any reason does not accept the appointment or having accepted ceases to be a trustee, the survivor or survivors shall execute the trust and shall succeed to all the powers, duties and discretionary authority given to the trustees jointly.

(3) An individual trustee, with a co-trustee's consent, may, by a signed, written instrument, delegate any power, duty, or authority as trustee to that co-trustee. This delegation is effective upon delivery of the instrument to that co-trustee and may be revoked at any time by delivery of a similar signed, written instrument to that co-trustee. However, if a power, duty, or authority is expressly conferred upon only one trustee, it shall not be delegated to a co-trustee. If that power, duty, or authority is expressly excluded from exercise by a trustee, it shall not be delegated to the excluded trustee.

(4) If one trustee gives written notice to all other co-trustees of an action that the trustee proposes be taken, then the failure of any co-trustee to deliver a written objection to the proposal to the trustee, at the trustee's then address of record and within fifteen days from the date the co-trustee actually receives the notice, constitutes formal approval by the co-trustee, unless the co-trustee had previously given written notice that was unrevoked at the time of the trustee's notice, to that trustee that this fifteen-day notice provision is inoperative.

(5) As to any effective delegation made under subsection (3) of this section, a co-trustee has no liability for failure to participate in the administration of the trust.

Nothing in this section, however, otherwise excuses a co-trustee from liability for failure to participate in the administration of the trust and nothing in this section, including subsection (3) of this section, excuses a co-trustee from liability for the failure to attempt to prevent a breach of trust. [1985 c 30 § 41. Prior: 1984 c 149 § 68; 1959 c 124 § 3. Formerly RCW 30.99.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.019 Relinquishment of powers by trustee.

Any trustee may, by written instrument delivered to any then acting co-trustee and to the current adult income beneficia-

ries of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and upon whom it is conferred continues to have full power to exercise it. [1985 c 30 § 42. Prior: 1984 c 149 § 69.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.029 Resignation of trustee. Any trustee may resign, without judicial proceedings, by a writing signed by the trustee and filed with the trust records, to be effective upon the trustee's discharge as provided in RCW 11.98.041. [1989 c 10 § 3. Prior: 1985 c 30 § 43; prior: 1959 c 124 § 4. Formerly RCW 30.99.040.]

Intent—1989 c 10 § 3: "It is the intent of the legislature that RCW 11.98.029 be restored to full force and effect." [1989 c 10 § 2.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.039 Nonjudicial change of trustee—Notice—Judicial appointment or change of trustee—Liability and duties of successor fiduciary. (1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to all adult income beneficiaries of the trust and to all known and identifiable adults for whom the income of the trust is being accumulated. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in *RCW 11.98.040.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, the beneficiaries and the then-acting trustee, if any, of a trust may agree for the nonjudicial change of the trustee under RCW 11.96.170. The trustee, or any beneficiary if there is no then-acting trustee, shall give written notice of the proposed change in trustee to every beneficiary or special representative, and to the trustor if alive. The notice shall: (a) State the name and mailing address of the trustee or the beneficiary giving the notice; (b) include a copy of the governing instrument; (c) state the name and mailing address of the successor trustee; and (d) include a copy of the proposed successor trustee's

agreement to serve as trustee. The notice shall advise the recipient of the right to petition for a judicial appointment or change in trustee as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed change in trustee may be indicated. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) Any beneficiary of a trust, the trustor if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee under the procedures provided in chapter 11.96 RCW (a) whenever the office of trustee becomes vacant, (b) upon filing of a petition of resignation by a trustee, (c) upon the giving of notice of the change in trustee as referred to in subsection (1) or (2) of this section, or (d) for any other reasonable cause.

(4) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section. [1985 c 30 § 44. Prior: 1984 c 149 § 72; 1959 c 124 § 5. Formerly RCW 30.99.050.]

***Reviser's note:** The reference to RCW 11.98.040 appears to be erroneous. RCW 11.98.040, recodified as RCW 11.98.160 as of January 1, 1985, does not relate to the discharge of trustees. The section governing that subject is RCW 11.98.041. (See reference to RCW 11.98.041 in subsection (2) of the section.)

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.041 Change of trustee—Discharge of outgoing trustee, when. Where a vacancy occurs in the office of trustee under the circumstances described in RCW 11.98.039 (1) or (2), the outgoing trustee shall be discharged upon the agreement of all parties entitled to notice or upon the expiration of thirty days after notice is given of such vacancy as required by the applicable subsection of RCW 11.98.039, whichever occurs first, or if no notice is required under RCW 11.98.039(1), upon the date the vacancy occurs, unless before the effective date of such discharge a petition is filed under RCW 11.98.039(3) regarding the appointment or

change of a trustee of the trust. Where a petition is filed under RCW 11.98.039(3) regarding the appointment or change of a trustee, the superior court having jurisdiction may discharge the trustee from the trust and may appoint a successor trustee upon such terms as the court may require. [1985 c 30 § 141.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.045 Criteria for transfer of trust assets or administration. (1) A trustee may transfer trust assets to a trustee in another jurisdiction or may transfer the place of administration of a trust to another jurisdiction if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust;

and

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section, RCW 11.98.051, or 11.98.055 shall not be construed to be doing a "trust business" as described in RCW 30.08.150(9). [1985 c 30 § 45. Prior: 1984 c 149 § 74.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.051 Nonjudicial transfer of trust assets or administration—Notice—Consent required. (1) The trustee may transfer trust assets or the place of administration in accordance with RCW 11.96.170. In addition, the trustee shall give written notice to those persons entitled to notice as provided for under RCW 11.96.100 and 11.96.110 and to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW. The notice shall:

(a) State the name and mailing address of the trustee;

(b) Include a copy of the governing instrument of the trust;

(c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;

(d) State the name and mailing address of the trustee to whom the assets or administration will be transferred together with evidence that the trustee has agreed to accept the assets or trust administration in the manner provided by law of the new place of administration. The notice shall also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;

(e) State the facts supporting the requirements of RCW 11.98.045(2);

(f) Advise the beneficiaries of the right to petition for judicial determination of the proposed transfer as provided in RCW 11.98.055; and

(g) Include a form on which the recipient may indicate consent or objection to the proposed transfer.

(2) If the trustee receives written consent to the proposed transfer from all persons entitled to notice, the trustee may transfer the trust assets or place of administration as provided in the notice. Transfer in accordance with the notice is a full discharge of the trustee's duties in relation to all property referred to therein. Any person dealing with the trustee is entitled to rely on the authority of the trustee to act and is not obliged to inquire into the validity or propriety of the transfer. [1985 c 30 § 46. Prior: 1984 c 149 § 75.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.055 Judicial transfer of trust assets or administration. (1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of trust assets or transfer of the place of administration in accordance with chapter 11.96 RCW.

(2) At the conclusion of the hearing, if the court finds the requirements of RCW 11.98.045(2) have been satisfied, it may direct the transfer of trust assets or the place of trust administration on such terms and conditions as it deems appropriate. The court in its discretion may provide for payment from the trust of reasonable fees and expenses for any party to the proceeding. Delivery of trust assets in accordance with the court's order is a full discharge of the trustee's duties in relation to all transferred property. [1985 c 30 § 47. Prior: 1984 c 149 § 76.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.060 Power of successor trustee. A successor trustee of a trust shall succeed to all the powers, duties and discretionary authority of the original trustee. [1985 c 30 § 48. Prior: 1959 c 124 § 6. Formerly RCW 30.99.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.065 Change in form of corporate trustee. Any appointment of a specific bank, trust company, or corporation as trustee is conclusively presumed to authorize the appointment or continued service of that entity's successor in interest in the event of a merger, acquisition, or reorganization, and no court proceeding is necessary to affirm the appointment or continuance of service. [1985 c 30 § 49. Prior: 1984 c 149 § 78.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.070 Power of trustee. A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage

the trust property in accordance with the standards provided by law, and in so doing may:

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

(4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

(5) Deposit stock or other corporate securities with any protective or other similar committee;

(6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by RCW 11.98.070(31);

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust, unless the loan is as described in RCW 83.110.020(2), and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he resides, or third person;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business

in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:

(a) A trustee may not delegate all of the trustee's duties and responsibilities;

(b) This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;

(c) This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;

(d) The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary; and

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust. [1997 c 252 § 75; 1989 c 40 § 7; 1985 c 30 § 50. Prior: 1984 c 149 § 80; 1959 c 124 § 7. Formerly RCW 30.99.070.]

Construction—Severability—1989 c 40: See notes following RCW 83.110.010.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.080 Consolidation of trusts. (1) Two or more trusts may be consolidated if:

(a) The trusts so provide; or

(b) Whether provided in the trusts or not, in accordance with subsection (2) of this section, if all interested persons consent as provided in subsection (2)(b) of this section and the requirements of subsection (1)(d) of this section are satisfied; or

(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;

(d) Consolidation under subsection (2) or (3) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries;

(e) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96.170.

(a) The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the beneficiaries of every trust affected by the consolidation as provided in RCW 11.96.100 and 11.96.110 and to any trustee of such trusts who does not join in the notice. The notice shall: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(d) of this section. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.

(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in RCW 11.96.100 and 11.96.110, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under chapter 11.96 RCW. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)(d) of this section have been satisfied, it may direct consolidation of two or more trusts on such terms and conditions as appropriate. The court in its discretion may provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(4) This section applies to all trusts whenever created.

(5) For powers of fiduciaries to divide trusts, see RCW 11.108.025. [1991 c 6 § 2; 1985 c 30 § 51. Prior: 1984 c 149 § 81.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.090 Nonliability of third persons without knowledge of breach. In the absence of knowledge of a breach of trust, no party dealing with a trustee is required to see to the application of any moneys or other properties delivered to the trustee. [1985 c 30 § 52. Prior: 1984 c 149 § 83; 1959 c 124 § 8. Formerly RCW 30.99.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.100 Nonliability for action or inaction based on lack of knowledge of events. When the happening of any event, including but not limited to such events as marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of the trust, then a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for any action or inaction based on lack of knowledge of the event. A corporate trustee is not liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered. [1985 c 30 § 53. Prior: 1984 c 149 § 84; 1959 c 124 § 9. Formerly RCW 30.99.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.110 Contract and tort liability. As used in this section, a trust includes a probate estate, and a trustee includes a personal representative. The words "trustee" and "as trustee" mean "personal representative" and "as personal representative" where this section is being construed in regard to personal representatives.

Actions on contracts which have been transferred to a trust and on contracts made by a trustee, and actions in tort for personal liability incurred by a trustee in the course of administration may be maintained by the party in whose favor the cause of action has accrued as follows:

(1) The plaintiff may sue the trustee in the trustee's representative capacity and any judgment rendered in favor of the plaintiff is collectible by execution out of the trust property: PROVIDED, HOWEVER, If the action is in tort, collection shall not be had from the trust property unless the court determines in the action that (a) the tort was a common incident of the kind of business activity in which the trustee or the trustee's predecessor was properly engaged for the trust; or (b) that, although the tort was not a common incident of such activity, neither the trustee nor the trustee's predecessor, nor any officer or employee of the trustee or the trustee's predecessor, was guilty of personal fault in incurring the liability; or (c) that, although the tort did not fall within classes (a) or (b) above, it increased the value of the trust property. If the tort is within classes (a) or (b) above, collection may be had of the full amount of damage proved, and if the tort is within class (c) above, collection may be had only to the extent of the increase in the value of the trust property.

(2) If the action is on a contract made by the trustee, the trustee may be held personally liable on the contract, if personal liability is not excluded. Either the addition by the trustee of the words "trustee" or "as trustee" after the

signature of a trustee to a contract or the transaction of business as trustee under an assumed name in compliance with chapter 19.80 RCW excludes the trustee from personal liability. If the action is on a contract transferred to the trust or trustee, subject to any rights therein vested at time of the transfer, the trustee is personally liable only if he or she has in writing assumed that liability.

(3) In any such action against the trustee in the trustee's representative capacity the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if the trustee had paid the plaintiff's claim.

(4) The trustee may also be held personally liable for any tort committed by him or her, or by his or her agents or employees in the course of their employments only if, and to the extent that, damages for the tort are not collectible from trust property as provided in and pursuant to subsection (1) of this section.

(5) The procedure for all actions provided in this section is as provided in chapter 11.96 RCW.

(6) Nothing in this section shall be construed to change the existing law with regard to the liability of the trustee of a charitable trust for the torts of the trustee. [1988 c 29 § 8; 1985 c 30 § 54. Prior: 1984 c 149 § 85; 1983 c 3 § 50; 1959 c 124 § 10. Formerly RCW 30.99.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.130 Violation of rule against perpetuities by instrument—Periods during which trust not invalid. If any provision of an instrument creating a trust, including the provisions of any further trust created, or any other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument violates the rule against perpetuities, neither such provision nor any other provisions of the trust, or such further trust or other disposition, is thereby 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. [1985 c 30 § 55. Prior: 1984 c 149 § 87; 1965 c 145 § 11.98.010; prior: 1959 c 146 § 1. Formerly RCW 11.98.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.140 Distribution of assets and vesting of interest during period trust not invalid. If, during any period in which an instrument creating a trust, as described in RCW 11.98.130, 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 or pursuant to any further trust or other disposition resulting from exercise of the power of appointment granted in or created through authority under such instrument, become distributable or any beneficial interest in any of the trust assets should by the terms of the instrument, or such further trust or other disposition become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument, or such further trust or other disposition. [1985 c 30 § 56. Prior: 1984 c 149 § 88; 1965 c 145 § 11.98.020; prior: 1959 c 146 § 2. Formerly RCW 11.98.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.150 Distribution of assets at expiration of period. If, at the expiration of any period in which an instrument creating a trust, as described in RCW 11.98.009, 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 the assets shall be distributed as the superior court having jurisdiction directs, giving effect to the general intent of the creator of the trust or person exercising a power of appointment in the case of any further trust or other disposition of property made pursuant to the exercise of a power of appointment. [1985 c 30 § 57. Prior: 1984 c 149 § 89; 1965 c 145 § 11.98.030; prior: 1959 c 146 § 3. Formerly RCW 11.98.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.160 Effective date of irrevocable inter vivos trust—Effective date of revocable inter vivos or testamentary trust. For the purposes of RCW 11.98.130 through 11.98.150 the effective date of an instrument purporting to create an irrevocable inter vivos trust is the date on which it is executed by the trustor, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust is the date of the trustor's or testator's death. [1989 c 14 § 2; 1985 c 30 § 58. Prior: 1984 c 149 § 90; 1965 c 145 § 11.98.040; prior: 1959 c 146 § 4. Formerly RCW 11.98.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.170 Designation of trustee as beneficiary of life insurance policy or retirement plan—Determination of proper recipient of proceeds—Definitions—Beneficiary designations executed before January 1, 1985, not invalidated. (1) Any life insurance policy or retirement plan payment provision may designate as beneficiary:

(a) A trustee named or to be named by will, and immediately after the proving of the will, the proceeds of such insurance or of such plan designated as payable to that

trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of under the terms of the will governing the testamentary trust; or

(b) A trustee named or to be named under a trust agreement executed by the insured, the plan participant, or any other person, and the proceeds of such insurance or retirement plan designated as payable to such trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of by the trustee as provided in such trust agreement; a trust is valid even if the only corpus consists of the right of the trustee to receive as beneficiary insurance or retirement plan proceeds; any such trustee may also receive assets, other than insurance or retirement plan proceeds, by testamentary disposition or otherwise and, unless directed otherwise by the transferor of the assets, shall administer all property of the trust according to the terms of the trust agreement.

(2) If no qualified trustee makes claim to the insurance policy or retirement plan proceeds from the insurance company or the plan administrator within twelve months after the death of the insured or plan participant, determination of the proper recipient of the proceeds shall be made pursuant to the judicial or nonjudicial dispute resolution procedures of chapter 11.96 RCW, unless prior to the institution of the judicial procedures, a qualified trustee makes claim to the proceeds, except that (a) if satisfactory evidence is furnished the insurance company or plan administrator within the twelve-month period showing that no trustee can or will qualify to receive such proceeds, payment shall be made to those otherwise entitled to the proceeds under the terms of the policy or retirement plan, including the terms of the beneficiary designation except that (b) if there is any dispute as to the proper recipient of insurance policy or retirement plan proceeds, the dispute shall be resolved pursuant to the judicial or nonjudicial resolution procedures in chapter 11.96 RCW.

(3) The proceeds of the insurance or retirement plan as collected by the trustee are not subject to debts of the insured or the plan participant to any greater extent than if the proceeds were payable to any named beneficiary other than the personal representative or the estate of the insured or of the plan participant.

(4) For purposes of this section the following definitions apply:

(a) "Plan administrator" means the person upon whom claim must be made in order for retirement plan proceeds to be paid upon the death of the plan participant.

(b) "Retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for payment to a beneficiary designated by the plan participant for whom the plan is established. The term includes, without limitation, such plans regardless of source of funding, and, for example, includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other retirement plan or program.

(c) "Trustee" includes any custodian under chapter 11.114 RCW or any similar statutory provisions of any other state and the terms "trust agreement" and "will" refer to the

provisions of chapter 11.114 RCW or such similar statutory provisions of any other state.

(5) Enactment of this section does not invalidate life insurance policy or retirement plan beneficiary designations executed prior to January 1, 1985, naming a trustee established by will or by trust agreement. [1991 c 193 § 29; 1985 c 30 § 59. Prior: 1984 c 149 § 91.]

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.200 Beneficiary trustee—Limitations on power. Due to the inherent conflict of interest that exists between a trustee and a beneficiary of a trust, unless the terms of a trust refer specifically to RCW 11.98.200 through 11.98.240 and provide expressly to the contrary, the powers conferred upon a trustee who is a beneficiary of the trust, other than the trustor as a trustee, cannot be exercised by the trustee to make:

(1) Discretionary distributions of either principal or income to or for the benefit of the trustee, except to provide for the trustee's health, education, maintenance, or support as described under section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section;

(2) Discretionary allocations of receipts or expenses as between principal and income, unless the trustee acts in a fiduciary capacity whereby the trustee has no power to enlarge or shift a beneficial interest except as an incidental consequence of the discharge of the trustee's fiduciary duties; or

(3) Discretionary distributions of either principal or income to satisfy a legal obligation of the trustee.

A proscribed power under this section that is conferred upon two or more trustees may be exercised by the trustees that are not disqualified under this section. If there is no trustee qualified to exercise a power proscribed under this section, a person described in RCW 11.96.070 who is entitled to seek judicial proceedings with respect to a trust may apply to a court of competent jurisdiction to appoint another trustee who would not be disqualified, and the power may be exercised by another trustee appointed by the court. Alternatively, another trustee who would not be disqualified may be appointed in accordance with the provisions of the trust instrument if the procedures are provided, or as set forth in RCW 11.98.039 as if the office of trustee were vacant, or by a nonjudicial dispute resolution agreement under RCW 11.96.170. [1994 c 221 § 65; 1993 c 339 § 2.]

Application—1994 c 221: "The 1994 c 221 amendments to RCW 11.98.200(3) are remedial in nature and apply retroactively to July 25, 1993." [1994 c 221 § 74.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—1993 c 339: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 339 § 14.]

11.98.210 Beneficiary trustee—Disregard of provision conferring absolute or similar power—Power of

removal. If a trustee is a beneficiary of the trust and the trust instrument confers the power to make distributions of principal or income for the trustee's health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a trust provision purporting to confer "absolute," "sole," "complete," "conclusive," or a similar discretion relating to the exercise of such trustee powers shall be disregarded in the exercise of the power, and the power may then only be exercised reasonably and in accordance with the ascertainable standard as set forth in RCW 11.98.200 and this section. A person who has the right to remove or to replace a trustee does not possess nor may the person be deemed to possess by virtue of having that right the powers of the trustee who is subject to removal or replacement. [1993 c 339 § 3.]

Severability—1993 c 339: See note following RCW 11.98.200.

11.98.220 Beneficiary trustee—Inferences of law—Judicial review. RCW 11.98.200 through 11.98.240 do not raise any inference that the law of this state prior to July 25, 1993, was different than under RCW 11.98.200 through 11.98.240. Further, RCW 11.98.200 through 11.98.240 do not raise an inference that prior to July 25, 1993, a trustee's exercise or failure to exercise a power described in RCW 11.98.200 through 11.98.240 was not subject to review by a court of competent jurisdiction for abuse of discretion or breach of fiduciary duty under chapter 11.96 RCW or other applicable law. Following July 25, 1993, the power of judicial review continues to apply. [1993 c 339 § 4.]

Severability—1993 c 339: See note following RCW 11.98.200.

11.98.230 Beneficiary trustee—Income under marital deduction—Spousal power of appointment. Notwithstanding any provision of RCW 11.98.200 through 11.98.240 seemingly to the contrary, RCW 11.98.200 through 11.98.240 do not limit or restrict the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, RCW 11.98.200 through 11.98.240 do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections. [1993 c 339 § 5.]

Severability—1993 c 339: See note following RCW 11.98.200.

11.98.240 Beneficiary trustee—Applicability—Exceptions—Election of exception—Cause of action.

(1)(a) RCW 11.98.200 and 11.98.210 respectively apply to:

(i) A trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after July 25, 1993, unless the instrument's terms refer specifically to RCW 11.98.200 or 11.98.210 respectively and provide expressly to the contrary. However, except

for RCW 11.98.200(3), the 1994 c 221 amendments to RCW 11.98.200 apply to a trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after January 1, 1995, unless the instrument's terms refer specifically to RCW 11.98.200 and provide expressly to the contrary.

(ii) A trust created under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed before July 25, 1993, unless:

(A) The trust is revoked or amended and the terms of the amendment refer specifically to RCW 11.98.200 and provide expressly to the contrary;

(B) All parties in interest, as defined in subsection (3) of this section elect affirmatively, in the manner prescribed in subsection (4) of this section, not to be subject to the application of this subsection. The election must be made by the later of September 1, 2000, or three years after the date on which the trust becomes irrevocable; or

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under RCW 11.96.070 obtains a judicial determination, under chapter 11.96 RCW, that the application of this subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

(b) Notwithstanding (a) of this subsection, RCW 11.98.200 and 11.98.210 respectively apply to a trust established under a will or codicil of a decedent dying on or after July 25, 1993, and to an inter vivos trust to which the trustor had on or after July 25, 1993, the power to terminate, revoke, amend, or modify, unless:

(i) The terms of the instrument specifically refer to RCW 11.98.200 or 11.98.210 respectively and provide expressly to the contrary; or

(ii) The decedent or the trustor was not competent, on July 25, 1993, to change the disposition of his or her property, or to terminate, revoke, amend, or modify the trust, and did not regain his or her competence to dispose, terminate, revoke, amend, or modify before the date of the decedent's death or before the trust could not otherwise be revoked, terminated, amended, or modified by the decedent or trustor.

(2) RCW 11.98.200 neither creates a new cause of action nor impairs an existing cause of action that, in either case, relates to a power proscribed under RCW 11.98.200 that was exercised before July 25, 1993. RCW 11.98.210 neither creates a new cause of action nor impairs an existing cause of action that, in either case, relates to a power proscribed, limited, or qualified under RCW 11.98.210.

(3) For the purpose of subsection (1)(a)(ii) of this section, "parties in interest" means those persons identified as "required parties to the dispute" under RCW 11.96.170(6)(b).

(4) The affirmative election required under subsection (1)(a)(ii)(B) of this section must be made in the following manner:

(a) If the trust is revoked or amended, through a revocation of or an amendment to the trust; or

(b) Through a nonjudicial dispute resolution agreement described in RCW 11.96.170. [1997 c 252 § 76; 1994 c 221 § 66; 1993 c 339 § 6.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Severability—1993 c 339: See note following RCW 11.98.200.

11.98.900 Application of RCW 11.98.130 through 11.98.160. The provisions of RCW 11.98.130 through 11.98.160 are applicable to any instrument purporting to create a trust regardless of the date such instrument bears, unless it has been previously adjudicated in the courts of this state. [1985 c 30 § 60. Prior: 1984 c 149 § 93; 1971 ex.s. c 229 § 1; 1965 c 145 § 11.98.050; prior: 1959 c 146 § 5. Formerly RCW 11.98.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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.

11.98.910 Severability—1959 c 124. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1985 c 30 § 61. Prior: 1959 c 124 § 11. Formerly RCW 30.99.900.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.920 Short title. This act shall be known as the "Washington Trust Act." [1985 c 30 § 62. Prior: 1959 c 124 § 12. Formerly RCW 30.99.910.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.99 CONSTRUCTION

Sections

11.99.010	Effective date of title.
11.99.013	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 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. See 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 11.100

INVESTMENT OF TRUST FUNDS

Sections

- 11.100.010 Provisions of chapter to control—Alteration by controlling instrument.
- 11.100.015 Guardians, guardianships and funds are subject to chapter.
- 11.100.020 Management of trust assets by fiduciary.
- 11.100.023 Authority of fiduciary to invest in certain enterprises.
- 11.100.025 Marital deduction interests.
- 11.100.030 Investment in savings accounts—Requirements.
- 11.100.035 Investments in securities of certain investment trusts.
- 11.100.037 Investment or distribution of funds held in fiduciary capacity—Deposit in other departments authorized—Collateral security required, exception.
- 11.100.040 Court may permit deviation from terms of trust instrument.
- 11.100.045 Fiduciary—Duty to beneficiaries.
- 11.100.047 Fiduciary—Duty to diversify.
- 11.100.050 Scope of chapter.
- 11.100.060 Fiduciary may hold and retain trust property—Investments—Liability.
- 11.100.070 Meaning of terms in trust instrument.
- 11.100.090 Dealings with self or affiliate.
- 11.100.120 Use of trust funds for life insurance.
- 11.100.130 Person to whom power or authority to direct or control acts of fiduciary or investments of a trust is conferred deemed a fiduciary—Liability.
- 11.100.140 Notice and procedure for nonroutine transactions.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.100.010 Provisions of chapter to control—Alteration by controlling instrument. Any corporation, association, or person handling or investing trust funds as a fiduciary shall be governed in the handling and investment of such funds as in this chapter specified. A fiduciary who

invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with requirements of this chapter. The specific requirements of this chapter may be expanded, restricted, eliminated, or otherwise altered by provisions of the controlling instrument. [1995 c 307 § 1; 1985 c 30 § 63. Prior: 1955 c 33 § 30.24.010; prior: 1947 c 100 § 1; Rem. Supp. 1947 § 3255-10a. Formerly RCW 30.24.010.]

Application—1995 c 307: "This act applies prospectively only and not retroactively." [1995 c 307 § 7.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.015 Guardians, guardianships and funds are subject to chapter. In addition to other fiduciaries, a guardian of any estate is a fiduciary within the meaning of this chapter; and in addition to other trusts, a guardianship of any estate is a trust within the meaning of this chapter; and in addition to other trust funds, guardianship funds are trust funds within the meaning of this chapter. [1985 c 30 § 64. Prior: 1955 c 33 § 30.24.015; prior: 1951 c 218 § 1. Formerly RCW 30.24.015.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.020 Management of trust assets by fiduciary. (1) A fiduciary is authorized to acquire and retain every kind of property. In acquiring, investing, reinvesting, exchanging, selling and managing property for the benefit of another, a fiduciary, in determining the prudence of a particular investment, shall give due consideration to the role that the proposed investment or investment course of action plays within the overall portfolio of assets. In applying such total asset management approach, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, and if the fiduciary has special skills or is named trustee on the basis of representations of special skills or expertise, the fiduciary is under a duty to use those skills.

(2) Except as may be provided to the contrary in the instrument, the following are among the factors that should be considered by a fiduciary in applying this total asset management approach:

- (a) The probable income as well as the probable safety of their capital;
- (b) Marketability of investments;
- (c) General economic conditions;
- (d) Length of the term of the investments;
- (e) Duration of the trust;
- (f) Liquidity needs;
- (g) Requirements of the beneficiary or beneficiaries;
- (h) Other assets of the beneficiary or beneficiaries, including earning capacity; and
- (i) Effect of investments in increasing or diminishing liability for taxes.

(3) Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a fiduciary is authorized to acquire and retain every kind of property, real, personal, or

mixed, and every kind of investment specifically including but not by way of limitation, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion, and intelligence acquire for their own account. [1995 c 307 § 2; 1985 c 30 § 65. Prior: 1984 c 149 § 97; 1955 c 33 § 30.24.020; prior: 1947 c 100 § 2; Rem. Supp. 1947 § 3255-10b. Formerly RCW 30.24.020.]

Application—1995 c 307: See note following RCW 11.100.010.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Endowment care funds to be invested in accordance with RCW 11.100.020. RCW 68.44.030.

11.100.023 Authority of fiduciary to invest in certain enterprises. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to invest in new, unproven, untried, or other enterprises with a potential for significant growth whether producing a current return, either by investing directly therein or by investing as a limited partner or otherwise in one or more commingled funds which in turn invest primarily in such enterprises. The aggregate amount of investments held by a fiduciary under the authority of this section valued at cost shall not exceed ten percent of the net fair market value of the trust corpus, including investments made under the authority of this section valued at fair market value, immediately after any such investment is made. Any investment which would have been authorized by this section if in force at the time the investment was made is hereby authorized. [1985 c 30 § 66. Prior: 1984 c 149 § 98.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Securities in default ineligible for investment: RCW 30.24.080.

11.100.025 Marital deduction interests. Notwithstanding RCW 11.98.070(21)(a), 11.100.060, or any other statutory provisions to the contrary, with respect to trusts which require by their own terms or by operation of law that all income be paid at least annually to the spouse of the trust's creator, which do not provide that on the termination of the income interest that the entire then remaining trust estate be paid to the estate of the spouse of the trust's creator, and for which a federal estate or gift tax marital deduction is claimed, any investment in or retention of unproductive property is subject to a power in the spouse of the trust's creator to require either that any such asset be made productive, or that it be converted to productive assets within a reasonable period of time unless the instrument creating the interest provides otherwise. [1985 c 30 § 67. Prior: 1984 c 149 § 99.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Securities in default ineligible for investment: RCW 30.24.080.

11.100.030 Investment in savings accounts—Requirements. A corporation doing a trust business may invest trust funds in savings accounts with itself to the extent that deposits are insured by an agency of the federal government. Additional trust funds may be so invested by the corporation only if it first sets aside under the control of its trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited. [1985 c 30 § 68. Prior: 1984 c 149 § 101; 1967 c 133 § 3; 1955 c 33 § 30.24.030; prior: 1947 c 100 § 3; Rem. Supp. 1947 § 3255-10c. Formerly RCW 30.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.035 Investments in securities of certain investment trusts. (1) Within the standards of judgment and care established by law, and subject to any express provisions or limitations contained in any particular trust instrument, guardians, trustees, and other fiduciaries, whether individual or corporate, are authorized to acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940 as now or hereafter amended.

(2) Within the limitations of subsection (1) of this section, whenever the trust instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the fiduciary may invest in and hold such obligations either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(a) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(b) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

(3) If the fiduciary is a bank or trust company, then the fact that the fiduciary, or an affiliate of the fiduciary, provides services to the investment company or investment trust such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities of the open-end or closed-end management investment company or investment trust. The fiduciary shall furnish a copy of the prospectus relating to the securities to each person to whom

a regular periodic accounting would ordinarily be rendered under the trust instrument or under RCW 11.106.020, upon the request of that person. The restrictions set forth under RCW 11.100.090 may not be construed as prohibiting the fiduciary powers granted under this subsection. [1995 c 307 § 3; 1994 c 221 § 68; 1989 c 97 § 1; 1985 c 30 § 69. Prior: 1955 c 33 § 30.24.035; prior: 1951 c 132 § 1. Formerly RCW 30.24.035.]

Application—1995 c 307: See note following RCW 11.100.010.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.037 Investment or distribution of funds held in fiduciary capacity—Deposit in other departments authorized—Collateral security required, exception. Funds held by a bank or trust company in a fiduciary capacity awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. These funds, including managing agency accounts, may, unless prohibited by the instrument creating the trust or by other statutes of this state, be deposited in the commercial or savings or other department of the bank or trust company, only if the bank or trust company first sets aside under control of the trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by an agency of the federal government. [1985 c 30 § 70. Prior: 1984 c 149 § 104; 1967 c 133 § 4. Formerly RCW 30.24.037.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.040 Court may permit deviation from terms of trust instrument. Nothing contained in this chapter shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property. [1985 c 30 § 71. Prior: 1955 c 33 § 30.24.040; prior: 1947 c 100 § 4; Rem. Supp. 1947 § 3255-10d. Formerly RCW 30.24.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.045 Fiduciary—Duty to beneficiaries. A fiduciary shall invest and manage the trust assets solely in the interests of the trust beneficiaries. If a trust has two or more beneficiaries, the fiduciary shall act impartially in

investing and managing the trust assets, taking into account any differing interests of the beneficiaries. [1995 c 307 § 4.]

Application—1995 c 307: See note following RCW 11.100.010.

11.100.047 Fiduciary—Duty to diversify. Subject to the provisions of RCW 11.100.060 and any express provisions in the trust instrument to the contrary, a fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. [1995 c 307 § 5.]

Application—1995 c 307: See note following RCW 11.100.010.

11.100.050 Scope of chapter. The provisions of this chapter govern fiduciaries acting under wills, agreements, court orders, and other instruments effective before or after January 1, 1985. [1985 c 30 § 72. Prior: 1984 c 149 § 107; 1955 c 33 § 30.24.050; prior: 1947 c 100 § 5; Rem. Supp. 1947 § 3255-10e. Formerly RCW 30.24.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.060 Fiduciary may hold and retain trust property—Investments—Liability. Subject to express provisions to the contrary in the trust instrument, any fiduciary may hold and retain any real or personal property received into or acquired by the trust from any source. Except as to trust property acquired for consideration, a fiduciary may hold and retain any such property without need for diversification as to kinds or amount and whether or not the property is income producing.

Any fiduciary may invest funds held in trust under an instrument creating the trust in any manner and in any investment or in any class of investments authorized by the instrument.

The investments described in this section are permissible even though the securities or other property are not permitted under other provisions of this chapter, and even though the securities may be securities issued by the corporation that is the fiduciary.

A fiduciary is not liable for any loss incurred with respect to any investment held under the authority of or pursuant to this section if that investment was permitted when received or when the investment was made by the fiduciary, and if the fiduciary exercises due care and prudence in the disposition or retention of any such investment. [1985 c 30 § 73. Prior: 1984 c 149 § 108.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.070 Meaning of terms in trust instrument. The terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of RCW 11.100.020. [1985 c 30 § 74. Prior: 1984 c 149 § 110; 1955 c 33 § 30.24.070; prior: 1947 c 100

§ 7; 1941 c 41 § 13; Rem. Supp. 1947 § 3255-13. Formerly RCW 30.24.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.090 Dealings with self or affiliate. Unless the instrument creating the trust expressly provides to the contrary, any fiduciary in carrying out the obligations of the trust, may not buy or sell investments from or to himself, herself, or itself or any affiliated or subsidiary company or association. This section shall not be construed as prohibiting the trustee's powers under RCW 11.98.070(12). [1985 c 30 § 75. Prior: 1984 c 149 § 111; 1955 c 33 § 30.24.090; prior: 1947 c 100 § 9; 1941 c 41 § 17; Rem. Supp. 1947 § 3255-17. Formerly RCW 30.24.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.120 Use of trust funds for life insurance. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to use trust funds to acquire life insurance upon the life of any beneficiary or upon the life of another in whose life such beneficiary has an insurable interest. [1985 c 30 § 76. Prior: 1984 c 149 § 112; 1973 1st ex.s. c 89 § 1. Formerly RCW 30.24.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Insurable interest, guardian, trustee or other fiduciary: RCW 48.18.030(3)(d).

11.100.130 Person to whom power or authority to direct or control acts of fiduciary or investments of a trust is conferred deemed a fiduciary—Liability. Whenever power or authority to direct or control the acts of a fiduciary or the investments of a trust is conferred directly or indirectly upon any person other than the designated trustee of the trust, such person shall be deemed to be a fiduciary and shall be liable to the beneficiaries of the trust and to the designated trustee to the same extent as if he or she were a designated trustee in relation to the exercise or nonexercise of such power or authority. [1995 c 307 § 6; 1985 c 30 § 77. Prior: 1973 1st ex.s. c 89 § 2. Formerly RCW 30.24.130.]

Application—1995 c 307: See note following RCW 11.100.010.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.140 Notice and procedure for nonroutine transactions. (1) A trustee shall not enter into a significant nonroutine transaction in the absence of a compelling circumstance without:

(a) Providing the written notice called for by subsection (4) of this section; and

(b) If the significant nonroutine transaction is of the type described in subsection (2)(a) of this section, obtaining

an independent appraisal, or selling in an open-market transaction.

(2) A "significant nonroutine transaction" for the purpose of this section is defined as any of the following:

(a) Any sale, option, lease, or other agreement, binding for a period of ten years or more, dealing with any interest in real estate other than real estate purchased by the trustee or a vendor's interest in a real estate contract, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(b) The sale of any item or items of tangible personal property, including a sale of precious metals or investment gems other than precious metals or investment gems purchased by the trustee, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(c) The sale of shares of stock in a corporation whose stock is not traded on the open market, if the stock in question constitutes more than twenty-five percent of the corporation's outstanding shares; or

(d) The sale of shares of stock in any corporation where the stock to be sold constitutes a controlling interest, or would cause the trust to no longer own a controlling interest, in the corporation.

(3) A "compelling circumstance" for the purpose of this section is defined as a condition, fact, or event that the trustee believes necessitates action without compliance with this section in order to avoid immediate and significant detriment to the trust. If faced with a compelling circumstance, the trustee shall give the notice called for in subsection (4) of this section and may thereafter enter into the significant nonroutine transaction without waiting for the expiration of the twenty-day period.

(4) The written notice required by this section shall set forth such material facts as necessary to advise properly the recipient of the notice of the nature and terms of the intended transaction. This notice shall be given to the trustor, if living, to each person who is eighteen years or older and to whom income is presently payable or for whom income is presently being accumulated for distribution as income and for whom an address is known to the trustee, and to the attorney general if the trust is a charitable trust under RCW 11.110.020. The notice shall be mailed by United States certified mail, postage prepaid, return receipt requested, to the recipient's last-known address, or may be personally served, at least twenty days prior to the trustee entering into any binding agreements.

(5) The trustor, if living, or persons entitled to notice under this section may, by written instrument, waive any requirement imposed by this section.

(6) Except as required by this section for nonroutine transactions defined in subsection (2) of this section, a trustee shall not be required to notify beneficiaries of a trust of the trustee's intended action, to obtain an independent appraisal, or to sell in an open-market transaction.

(7) Any person dealing with a trustee may rely upon the trustee's written statement that the requirements of this section have been met for a particular transaction. If a trustee gives such a statement, the transaction shall be final unless the party relying on the statement has actual knowledge that the requirements of this section have not been met.

(8) The requirements of this section, and any similar requirements imposed by prior case law, shall not apply to personal representatives or to those trusts excluded from the definition of express trusts under RCW 11.98.009. [1985 c 30 § 78. Prior: 1984 c 149 § 114.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.102 COMMON TRUST FUNDS

Sections

- 11.102.010 Funds authorized—Investment—Rules and regulations—
"Affiliated" defined.
- 11.102.020 Accounting.
- 11.102.030 Applicability of chapter.
- 11.102.040 Interpretation of chapter.
- 11.102.050 Short title.

11.102.010 Funds authorized—Investment—Rules and regulations—"Affiliated" defined. Any bank or trust company qualified to act as fiduciary in this state, or in any other state if affiliated with a bank or trust company qualified to act as fiduciary in this state, may establish common trust funds for the purpose of furnishing investments to itself and its affiliated or related bank or trust company as fiduciary, or to itself and its affiliated or related bank or trust company, and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment: PROVIDED, That any bank or trust company qualified to act as fiduciary in the state of its charter, which is not a member of the federal reserve system, shall, in the operation of such common trust fund, comply with the rules and regulations as made from time to time by the director of financial institutions in the state where chartered and in Washington the director is hereby authorized and empowered to make such rules and regulations as he or she may deem necessary and proper in the premises.

"Affiliated" as used in this section means two or more banks or trust companies:

(1) In which twenty-five percent or more of their voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, are directly or indirectly owned or controlled by a holding company; or

(2) In which the election of a majority of the directors is controlled in any manner by a holding company. [1994 c 92 § 1; 1985 c 30 § 79. Prior: 1979 c 105 § 1; 1955 c 33 § 30.28.010; prior: 1943 c 55 § 1; Rem. Supp. 1943 § 3388. Formerly RCW 30.28.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.020 Accounting. Unless ordered by a court of competent jurisdiction the bank or trust company operating

such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. [1985 c 30 § 80. Prior: 1955 c 33 § 30.28.020; prior: 1943 c 55 § 2; Rem. Supp. 1943 § 3388-1. Formerly RCW 30.28.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.030 Applicability of chapter. This chapter shall apply to fiduciary relationships in existence on June 11, 1943, or thereafter established. [1985 c 30 § 81. Prior: 1955 c 33 § 30.28.030; prior: 1943 c 55 § 7; Rem. Supp. 1943 § 3388-6. Formerly RCW 30.28.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.040 Interpretation of chapter. This chapter shall be so interpreted and construed to effectuate its general purpose to make uniform the laws of those states which enact it. [1985 c 30 § 82. Prior: 1955 c 33 § 30.28.040; prior: 1943 c 55 § 3; Rem. Supp. 1943 § 3388-2. Formerly RCW 30.28.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.050 Short title. This chapter may be cited as the uniform common trust fund act. [1985 c 30 § 83. Prior: 1955 c 33 § 30.28.050; prior: 1943 c 55 § 4; Rem. Supp. 1943 § 3388-3. Formerly RCW 30.28.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.104 WASHINGTON PRINCIPAL AND INCOME ACT

Sections

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Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

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) Except as provided in RCW 11.104.110, "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 trust asset that is included on any death tax return the trustee may, but need not, use the value finally determined for the purposes of the federal estate tax if applicable, otherwise for another estate or inheritance tax;

(3) "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal. [1997 c 252 § 78; 1985 c 30 § 84. Prior: 1984 c 149 § 116; 1971 c 74 § 1.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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 persons 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 consistent with the instrument but that is contrary to a provision of this chapter. [1985 c 30 § 85. Prior: 1984 c 149 § 117; 1971 c 74 § 2.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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 premiums and bond discounts;

(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) Increment in value on bonds or other obligations issued at a 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, bonds, or other obligations for the payment of money 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. [1985 c 30 § 86. Prior: 1984 c 149 § 118; 1971 c 74 § 3.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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) Subject to subsection (2)(a) and (b) of this section, in the administration of a decedent's estate or of an asset becoming subject to a trust by reason of a will all receipts paid on or before the date of death of the testator are principal and all receipts paid after that date are income.

(a) Notwithstanding the foregoing, receipts due but not paid on or before 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 on or before 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, if such interest was not subject to any discretion to withhold, accumulate, or distribute income to or for any other beneficiary, then income on hand but undistributed belongs to that income beneficiary or that beneficiary's estate, except that if the income beneficiary is the surviving spouse of the testator or grantor of the trust and the income interest otherwise qualifies for the marital deduction on any federal estate or gift tax return, then all accrued but undistributed income is subject to a testamentary general power of appointment in the surviving spouse, exercisable as provided in RCW 11.95.060 by specific reference to this statutory provision, to appoint the same to himself or herself, or to his or her estate. All undistributed income not disposed of under the foregoing provisions of this subsection 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.

(5) Corporate distributions to stockholders shall be treated as due on the date 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. [1985 c 30 § 87. Prior: 1984 c 149 § 119; 1971 c 74 § 4.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.050 Income earned during administration of a decedent's estate. (1) Unless the will or the court otherwise provides and subject to subsection (2) of this section, 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, except that the principal shall be reimbursed from income for any increase in estate taxes due to the use of administration expenses that were paid from principal as deductions for income tax purposes.

(2) Unless the will or the court 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 beneficiaries of any specific bequest, legacy, or devise, 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;

(b) Subject to (c) of this subsection, to all other beneficiaries, including trusts, 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, plus the balance of all income accrued since the death of the testator, and less the balance of all 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 computed at times of distribution on the basis of the fair value, provided, that the amount of income earned before the date or dates of payment of any estate or inheritance tax shall be distributed to those beneficiaries in proportion to their interests immediately before the making of those payments. A personal representative who has been granted nonintervention powers under chapter 11.68 RCW may determine the time and manner of distributing the income to a beneficiary entitled to receive the income including:

(i) A residuary beneficiary; and

(ii) A testamentary trust beneficiary to whom trust income must be distributed or, if the trustee named in the will approves or ratifies the distribution, to whom trust income may be distributed; and

(c) Pecuniary bequests not in trust do not receive income, and, subject to the provisions of *RCW 11.56.160, all such bequests, including those to the decedent's surviving spouse, are not allocated any share of the expenses identified in subsection (2)(b) of this section.

(3) Any income with respect to which the income taxes have been paid which is payable in whole or in part to one or more charitable or other tax exempt organizations, and for which an income tax charitable deduction was allowable, shall be allocated among the distributees in such manner that the diminution in such taxes resulting from the charitable deduction allowable will inure to the benefit of the charitable or tax exempt organization giving rise to the deduction.

(4) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust. [1993 c 161 § 1; 1985 c 30 § 88. Prior: 1984 c 149 § 120; 1971 c 74 § 5.]

***Reviser's note:** RCW 11.56.160 was repealed by 1994 c 221 § 72, effective January 1, 1995. Later enactment, see chapter 11.10 RCW.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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 stock became a part of the trust corpus 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) of this section 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) of this section, 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. [1985 c 30 § 89. Prior: 1984 c 149 § 121; 1971 c 74 § 6.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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 provide 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 is 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.

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(2) The increment in value of a bond or other obligation for the payment of money bearing no fixed rate of interest or 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. [1985 c 30 § 90. Prior: 1984 c 149 § 122; 1971 c 74 § 7.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.071 Charitable remainder unitrusts. (1) Notwithstanding any contrary provision of this chapter, if the trust instrument adopts this section by specific reference, an increase in the value of the following investments, over the value of the investments at the time of acquisition by the trust, is distributable as income when it becomes available for distribution:

(a) A zero coupon bond;

(b) An annuity contract before annuitization;

(c) A life insurance contract before the death of the insured;

(d) An interest in a common trust fund as defined in section 584 of the Internal Revenue Code;

(e) An interest in a partnership as defined in section 7701 of the Internal Revenue Code; or

(f) Any other obligation for the payment of money that is payable at a future time in accordance with a fixed, variable, or discretionary schedule of appreciation in excess of the price at which it was issued.

(2) The increase in value of the investments described in subsection (1) of this section is allocable to the beneficiary who is the beneficiary to whom income may be distributed at the time when the trustee receives cash on account of the investment, notwithstanding RCW 11.104.070.

(3) For purposes of this section, the increase in value of an investment described in subsection (1) of this section is available for distribution only when the trustee receives cash on account of the investment. [1997 c 252 § 79.]

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 persons 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. [1985 c 30 § 91. Prior: 1984 c 149 § 123; 1971 c 74 § 8.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.090 Disposition of receipts from 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. Receipts shall be allocated to income or apportioned between income and principal at the discretion of the trustee, but in no event may principal be allocated more than that portion of the gross receipts that is deductible for federal income tax purposes during that year. 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, the trustee 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. [1985 c 30 § 92. Prior: 1984 c 149 § 124; 1971 c 74 § 9.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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 deferred payment right—Inventory value determination. (1) Subject to subsection (3) of this section, if the principal of a trust includes a deferred payment right including the right to receive deferred compensation, the proceeds of the right or the amount of deferred compensation, on receipt, are income to the extent determinable without reference to this

section, or if not so determinable, are income up to five percent of the inventory value of the right or amount, determined separately for each year in which the right or amount is subject to the trust. The remainder of the proceeds or amount is principal. If not otherwise determinable, the allocation to income is computed in the same manner in which interest under a loan of the initial inventory amount would be computed, at five percent interest compounded annually, as if annual payments were made by the borrower to the lender.

(2) If income is determined under this section, for the first year, inventory value is determined as provided by this chapter or by this section for deferred compensation. For each year after the first year, the inventory value is:

(a) Reduced to the extent that the proceeds of the right or amount received during the preceding year were allocated to principal; and

(b) Increased to the extent that the proceeds received during the preceding year were less than five percent of the inventory value of that year.

(3) While the deferred payment right is under administration in a decedent's estate, income and principal are determined by using the fiscal year of the estate and ending on the date the trust is funded with the right. After the administration of the estate, the fiscal year of the trust is used. The five percent allocation to income is prorated for any year that is less than twelve months.

(4) The proceeds of a deferred payment right include all receipts relating to the right, whether or not the receipts are periodic. After the proceeds are received by the trustee and allocated in accordance with this section, this section does not apply to the proceeds except to the extent the proceeds include a continuing deferred payment right or right to receive deferred compensation.

(5) In this section:

(a) "Deferred compensation" means an amount receivable under an arrangement for the payment of compensation in a year after the year in which the compensation was earned, whether the obligation to pay is funded or unfunded and includes the right to payment:

(i) Of benefits under a nonqualified plan of deferred compensation or similar arrangement or agreement; or

(ii) Of benefits under an employee benefit plan as defined in this section;

(b) "Deferred payment right" means a depletable asset, other than natural resources governed by RCW 11.104.090 or timber governed by RCW 11.104.100, consisting of the right to property under a contract, account, or other arrangement that is payable not earlier than twelve months after the date the right becomes subject to the trust. A deferred payment right includes the right to receive a periodic, annuity, installment, or single-sum future payment:

(i) Under a leasehold, patent, copyright, or royalty;

(ii) Of income in respect of a decedent under section 691 of the Internal Revenue Code of 1986; or

(iii) Of death benefits;

(c) "Employee benefit plan" means any of the following, whether funded by a trust, custodian account, annuity, or retirement bond:

(i) A plan, individual retirement account, or deferred compensation plan or arrangement that is described in RCW 49.64.020, section 401(a), 403(a), 403(b), 408, or 457 of the

Internal Revenue Code of 1986, as amended, or in section 409 of the Internal Revenue Code in effect before January 1, 1984; or

(ii) An employee benefit plan established or maintained by:

- (A) The government of the United States;
- (B) The state of Washington;
- (C) A state or territory of the United States;
- (D) The District of Columbia; or
- (E) A political subdivision, agency, or instrumentality of

the entities in (c)(ii)(A) through (D) of this subsection; and
(d) "Year" means the fiscal year of the estate or trust for federal income tax purposes.

(6) The deferred compensation payable consisting of the account balance or accrued benefit as of the date of death of the owner of such amount receivable or, if elected, the alternate valuation date for federal estate tax purposes, shall be the inventory value of the deferred compensation as used in this chapter as of that date. [1997 c 252 § 80; 1971 c 74 § 11.]

11.104.120 Underproductive property—Definition.

(1) Except as provided in subsection (5) of this section, a portion of the net proceeds of sale of any part of principal which is underproductive 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, less expenses, including any capital gains tax 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 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.

(5) This section does not apply to underproductive property that the trustee is authorized to retain by the terms of the controlling document or by law; that is received into or acquired by the trust from any source, except property which is purchased by the fiduciary in administering the trust; the retention of which has been authorized in writing

by the income beneficiaries; or the retention of which would be considered proper under the standard set forth in RCW 11.100.020.

(6) As used in this section, the term "underproductive property" refers to any property that has not produced an average net income of at least one percent per year (simple interest) of its inventory value for more than a year (including as income the value of any use of the property by the income beneficiary). [1985 c 30 § 93. Prior: 1984 c 149 § 125; 1971 c 74 § 12.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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) If the trustee deems the same to be appropriate under the standards in RCW 11.104.020(1)(c), a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles; 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 accountings, 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;

(f) All expenses reasonably incurred for current management of principal and application of income; and

(g) Any tax levied upon receipts allocated to 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) of this section, 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) of this section, 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) of this section 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, whether on account of direct or indirect borrowing for the purpose of paying those taxes, 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. [1985 c 30 § 94. Prior: 1984 c 149 § 126; 1971 c 74 § 13.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

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.]

11.104.901 Application of RCW 11.104.010 through 11.104.130 as of January 1, 1985. RCW 11.104.010 through 11.104.090, 11.104.120, and 11.104.130, as amended and reenacted in 1985, shall apply as of January 1, 1985. [1985 c 30 § 142.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

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.]

Chapter 11.106

TRUSTEES' ACCOUNTING ACT

Sections

- 11.106.010 Scope of chapter—Exceptions.
- 11.106.020 Trustee's annual statement.
- 11.106.030 Intermediate and final accounts—Contents—Filing.
- 11.106.040 Account—Court may require—Petition.
- 11.106.050 Account filed—Return day—Notice.
- 11.106.060 Account filed—Objections—Appointment of guardians ad litem—Representatives.
- 11.106.070 Court to determine accuracy, validity—Decree.
- 11.106.080 Effect of decree.
- 11.106.090 Appeal from decree.
- 11.106.100 Waiver of accounting by beneficiary.
- 11.106.110 Modification under chapter 11.97 RCW—How constituted.

11.106.010 Scope of chapter—Exceptions. This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the superior court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor does this chapter apply to personal representatives. [1985 c 30 § 95. Prior: 1984 c 149 § 128; 1955 c 33 § 30.30.010; prior: 1951 c 226 § 10. Formerly RCW 30.30.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.020 Trustee's annual statement. The trustee or trustees appointed by any will, deed, or agreement executed shall mail or deliver at least annually to each adult income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary shall furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides. [1985 c 30 § 96. Prior: 1984 c 149 § 129; 1955 c 33 § 30.30.020; prior: 1951 c 226 § 2. Formerly RCW 30.30.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.106.030 Intermediate and final accounts—Contents—Filing. In addition to the statement required by RCW 11.106.020 any such trustee or trustees whenever it or they so desire, may file in the superior court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

- (1) The period covered by the account;
- (2) The total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;
- (3) An itemized statement of all principal funds received and disbursed during such period;
- (4) An itemized statement of all income received and disbursed during such period, unless waived;
- (5) The balance of such principal and income remaining at the close of such period and how invested;
- (6) The names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;
- (7) A description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

After the time for termination of the trust has arrived, the trustee or trustees may also file a final account in similar manner. [1985 c 30 § 97. Prior: 1984 c 149 § 130; 1955 c 33 § 30.30.030; prior: 1951 c 226 § 3. Formerly RCW 30.30.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.040 Account—Court may require—Petition. Upon the petition under chapter 11.96 RCW of any settlor or of any beneficiary of such a trust after due notice as provided in chapter 11.96 RCW to the trustee the superior court in the county where the trustee or one of the trustees resides may direct the trustee or trustees to file in the court an account at any time after one year from the day on which such a report was last filed, or if none, then after one year from the inception of the trust. [1985 c 30 § 98. Prior: 1984 c 149 § 131; 1955 c 33 § 30.30.040; prior: 1951 c 226 § 4. Formerly RCW 30.30.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.050 Account filed—Return day—Notice. When any account has been filed pursuant to RCW 11.106.030 or 11.106.040, the clerk of the court where filed shall fix a return day therefor as provided in RCW 11.96.090 and issue a notice. The notice shall state the time and place for the return date, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle the account, and that any objections or exceptions to the account must be filed with the clerk of the court on or before the return date. The notice shall be given as provided for notices under RCW 11.96.100 or 11.96.110. [1985 c 30 § 99. Prior: 1984 c 149 § 132; 1955 c 33 § 30.30.050; prior: 1951 c 226 § 5. Formerly RCW 30.30.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.060 Account filed—Objections—Appointment of guardians ad litem—Representatives. Upon or before the return date any beneficiary of the trust may file the beneficiary's written objections or exceptions to the account filed or to any action of the trustee or trustees set forth in the account. The court shall appoint guardians ad litem as provided in RCW 11.96.180 and the court may allow representatives to be appointed under RCW 11.96.110 and 11.96.170 to represent the persons listed in those sections. [1985 c 30 § 100. Prior: 1984 c 149 § 133; 1977 ex.s. c 80 § 31; 1955 c 33 § 30.30.060; prior: 1951 c 226 § 6. Formerly RCW 30.30.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

11.106.070 Court to determine accuracy, validity—Decree. Upon the return date or at some later date fixed by the court if so requested by one or more of the parties, the court without the intervention of a jury and after hearing all the evidence submitted shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth in the account including the purchase, retention, and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the account or any part of it, and surcharging the trustee or trustees for all losses, if any, caused by negligent or wilful breaches of trust. [1985 c 30 § 101. Prior: 1984 c 149 § 134; 1955 c 33 § 30.30.070; prior: 1951 c 226 § 7. Formerly RCW 30.30.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.080 Effect of decree. The decree rendered under RCW 11.106.070 shall be deemed final, conclusive, and binding upon all the parties interested including all incompetent, unborn, and unascertained beneficiaries of the trust subject only to the right of appeal under RCW 11.106.090. [1985 c 30 § 102. Prior: 1984 c 149 § 135; 1955 c 33 § 30.30.080; prior: 1951 c 226 § 8. Formerly RCW 30.30.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.090 Appeal from decree. The decree rendered under RCW 11.106.070 shall be a final order from which any party in interest may appeal as in civil actions to the supreme court or the court of appeals of the state of Washington. [1985 c 30 § 103. Prior: 1984 c 149 § 136; 1971

c 81 § 80; 1955 c 33 § 30.30.090; prior: 1951 c 226 § 9. Formerly RCW 30.30.090.]

Rules of court: Method of appellate review superseded by RAP 2.2(a)(3), 18.22.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.100 Waiver of accounting by beneficiary.

Any adult beneficiary entitled to an accounting under either RCW 11.106.020 or 11.106.030 may waive such an accounting by a separate instrument delivered to the trustee. [1985 c 30 § 104. Prior: 1984 c 149 § 137; 1955 c 33 § 30.30.100; prior: 1951 c 226 § 11. Formerly RCW 30.30.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.110 Modification under chapter 11.97

RCW—How constituted. This chapter is declared to be of similar import to the uniform trustees' accounting act. Any modification under chapter 11.97 RCW, including waiver, of the requirements of this chapter in any will, deed, or agreement heretofore or hereafter executed shall be given effect whether the waiver refers to the uniform trustees' accounting act by name or other reference or to any other act of like or similar import. [1985 c 30 § 105. Prior: 1984 c 149 § 138; 1955 c 33 § 30.30.110; prior: 1951 c 226 § 12. Formerly RCW 30.30.110.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.108

TRUST GIFT DISTRIBUTION

Sections

- 11.108.010 Definitions.
- 11.108.020 Marital deduction gift—Compliance with Internal Revenue Code—Fiduciary powers.
- 11.108.025 Election to qualify property for the marital deduction—Generation-skipping transfer tax allocations.
- 11.108.030 Pecuniary bequests—Valuation of assets if distribution other than money.
- 11.108.040 Construction of certain marital deduction formula bequests.
- 11.108.050 Marital deduction gift in trust.
- 11.108.060 Marital deduction gift—Survivorship requirement—Limits—Property to be held in trust.
- 11.108.900 Application of chapter.

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

(1) The term "pecuniary bequest" means a gift in a governing instrument which either is expressly stated as a fixed dollar amount or is a gift of a dollar amount determinable by the governing instrument, and a gift expressed in terms of a "sum" or an "amount," unless the context dictates otherwise, is a gift of a dollar amount.

(2) As the context might require, the term "marital deduction" means either the federal estate tax deduction or the federal gift tax deduction allowed for transfers to spouses under the Internal Revenue Code.

(3) The term "maximum marital deduction" means the maximum amount qualifying for the marital deduction.

(4) The term "marital deduction gift" means a gift intended to qualify for the marital deduction as indicated by a preponderance of the evidence including the governing instrument and extrinsic evidence whether or not the governing instrument is found to be ambiguous.

(5) The term "governing instrument" includes, but is not limited to: Will and codicils; revocable trusts and amendments or addenda to revocable trusts; irrevocable trusts; beneficiary designations under life insurance policies, annuities, employee benefit plans, and individual retirement accounts; payable-on-death, trust, or joint with right of survivorship bank or brokerage accounts; transfer on death designations or transfer on death or pay on death securities; and documents exercising powers of appointment.

(6) The term "fiduciary" means trustee or personal representative. Reference to a fiduciary in the singular includes the plural where the context requires.

(7) The term "gift" refers to all legacies, devises, and bequests made in a governing instrument.

(8) The term "transferor" means the testator, grantor, or other person making a gift.

(9) The term "spouse" includes the transferor's surviving spouse in the case of a deceased transferor. [1997 c 252 § 81; 1993 c 73 § 2; 1990 c 224 § 2; 1988 c 64 § 27; 1985 c 30 § 106. Prior: 1984 c 149 § 140.]

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.020 Marital deduction gift—Compliance with Internal Revenue Code—Fiduciary powers.

(1) If a governing instrument contains a marital deduction gift, the governing instrument shall be construed to comply with the marital deduction provisions of the Internal Revenue Code in every respect.

(2) If a governing instrument contains a marital deduction gift, any fiduciary operating under the governing instrument has all the powers, duties, and discretionary authority necessary to comply with the marital deduction provisions of the Internal Revenue Code. The fiduciary shall not take any action or have any power that may impair that deduction, but this does not require the fiduciary to make the elections under either section 2056(b)(7) or 2523(f) of the Internal Revenue Code that is referred to in RCW 11.108.025. [1997 c 252 § 82; 1993 c 73 § 3; 1988 c 64 § 28; 1985 c 30 § 107. Prior: 1984 c 149 § 141.]

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.025 Election to qualify property for the marital deduction—Generation-skipping transfer tax allocations. Unless a governing instrument directs to the contrary:

(1) The fiduciary shall have the power to make elections, in whole or in part, to qualify property for the marital deduction as qualified terminable interest property under section 2056(b)(7) or 2523(f) of the Internal Revenue Code or, if the surviving spouse is not a citizen of the United States, under section 2056A of the Internal Revenue Code. Further, the fiduciary shall have the power to make generation-skipping transfer tax allocations under section 2632 of the Internal Revenue Code.

(2) The fiduciary making an election under section 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code or making an allocation under section 2632 of the Internal Revenue Code may benefit personally from the election or allocation, with no duty to reimburse any other person interested in the election or allocation. The fiduciary shall have no duty to make any equitable adjustment and shall have no duty to treat interested persons impartially in respect of the election or allocation.

(3) The fiduciary of a trust, if an election is made under section 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code, if an allocation is made under section 2632 of the Internal Revenue Code, or if division of a trust is of benefit to the persons interested in the trust, may divide the trust into two or more separate trusts, of equal or unequal value, if:

(a) The terms of the separate trusts which result are substantially identical to the terms of the trust before division;

(b) In the case of a trust otherwise qualifying for the marital deduction under the Internal Revenue Code, the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction; and

(c) The allocation of assets shall be based upon the fair market value of the assets at the time of the division. [1997 c 252 § 83; 1993 c 73 § 4; 1991 c 6 § 1; 1990 c 179 § 2; 1988 c 64 § 29.]

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

11.108.030 Pecuniary bequests—Valuation of assets if distribution other than money. (1) If a governing instrument authorizes the fiduciary to satisfy a pecuniary bequest in whole or in part by distribution of property other than money, the assets selected for that purpose shall be valued at their respective fair market values on the date or dates of distribution, unless the governing instrument expressly provides otherwise. If the governing instrument permits the fiduciary to value the assets selected for the distribution as of a date other than the date or dates of distribution, then, unless the governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of that gift as stated in, or determined by, the governing instrument.

(2) A marital deduction gift shall be satisfied only with assets that qualify for those deductions. [1985 c 30 § 108. Prior: 1984 c 149 § 142.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.040 Construction of certain marital deduction formula bequests. (1) If a testator, under the terms of a governing instrument executed prior to September 12, 1981, leaves outright to or in trust for the benefit of that testator's surviving spouse an amount or fractional share of one-half of that testator's federal adjusted gross estate, or by any other reference to the maximum estate tax marital deduction allowable under federal law without referring, either in that governing instrument or in any codicil or amendment thereto, specifically to the unlimited federal estate tax marital deduction enacted as part of the economic recovery tax act of 1981, such expression shall, unless subsection (2) or (3) of this section applies, be construed as referring to the unlimited federal estate tax marital deduction, and also as expressing such amount or fractional share, as the case may be, in terms of the minimum amount which will cause the least possible amount of federal estate tax to be payable as a result of the testator's death, taking into account other property passing to the surviving spouse that qualifies for the marital deduction, at the value at which it qualifies, and also taking into account all credits against the federal estate tax, but only to the extent that the use of these credits do not increase the death tax payable.

(2) If this subsection applies to a testator, such expression shall be construed as referring to the estate tax marital deduction allowed by federal law immediately prior to the enactment of the unlimited estate tax marital deduction as a part of the economic recovery tax act of 1981. This subsection applies if subsection (3) of this section does not apply and:

(a) The application of this subsection to the testator will not cause an increase in the federal estate taxes payable as a result of the testator's death over the amount of such taxes which would be payable if subsection (1) of this section applied; or

(b) The testator is survived by a blood or adopted descendant who is not also a blood or adopted descendant of the testator's surviving spouse, unless such person or persons have entered into an agreement under the dispute resolution procedures in chapter 11.96 RCW; or

(c) The testator amended the governing instrument containing such expression after December 31, 1981, without amending such expression to refer expressly to the unlimited federal estate tax marital deduction.

(3) If the governing instrument contains language expressly stating that federal law of a particular time prior to January 1, 1982, is to govern the construction or interpretation of such expression, the expression shall be construed as referring to the marital deduction allowable under federal law in force and effect as of that time.

(4) If subsection (2) or (3) of this section applies to the testator, the expression shall not be construed as referring to any property that the personal representative of the testator's

estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property. If subsection (1) of this section applies to the testator, any provision shall be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property, but only to the extent that such construction does not cause the amount or fractional share left to or for the benefit of the surviving spouse to be reduced below the amount that would pass under subsection (2) or (3) of this section, whichever is applicable.

(5) This section is effective with respect to testators dying after December 31, 1982. [1985 c 30 § 109. Prior: 1984 c 149 § 143.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.050 Marital deduction gift in trust. If a governing instrument contains a marital deduction gift in trust, then in addition to the other provisions of this chapter, each of the following applies to the trust to the extent necessary to qualify the gift for the marital deduction:

(1) If the transferor's spouse is a citizen of the United States at the time of the transfer:

(a) The transferor's spouse is entitled to all of the income from the trust, payable annually or at more frequent intervals, during the spouse's life;

(b) During the life of the transferor's spouse, a person may not appoint or distribute any part of the trust property to a person other than the transferor's spouse;

(c) The transferor's spouse may compel the trustee of the trust to make any unproductive property of the trust productive, or to convert the unproductive property into productive property, within a reasonable time; and

(d) The transferor's spouse may, alone and in all events, dispose of all of the trust property, including accrued or undistributed income, remaining after the spouse's death under a testamentary general power of appointment, as defined in section 2041 of the Internal Revenue Code. However, this subsection (1)(d) does not apply to: (i) A marital deduction gift in trust which is described in subsection (2) of this section; (ii) that portion of a marital deduction gift in trust that has qualified for the marital deduction as a result of an election under section 2056(b)(7) or 2523(f) of the Internal Revenue Code; and (iii) that portion of marital deduction gift in trust that would have qualified for the marital deduction but for the fiduciary's decision not to make the election under section 2056(b)(7) or 2523(f) of the Internal Revenue Code;

(2) If the transferor's spouse is not a citizen of the United States at the time of the transfer, then to the extent necessary to qualify the gift for the marital deduction, subsection (1)(a), (b), and (c) of this section and each of the following applies to the trust:

(a) At least one trustee of the trust must be an individual citizen of the United States or a domestic corporation, and a distribution, other than a distribution of income, may not be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the

right to withhold from the distribution the tax imposed under section 2056A of the Internal Revenue Code on the distribution;

(b) The trust must meet such requirements as the secretary of the treasury of the United States by regulations prescribes to ensure collection of estate tax, under section 2056A(b) of the Internal Revenue Code; and

(c) Subsection (2)(a) and (b) of this section no longer apply to the trust if the transferor's spouse becomes a citizen of the United States and: (i) The transferor's spouse was a resident of the United States at all times after the transferor's death and before becoming a citizen; (ii) tax has not been imposed on the trust under section 2056A(b)(1)(A) of the Internal Revenue Code before the transferor's spouse becomes a citizen; or (iii) the transferor's spouse makes an election under section 2056A(b)(12)(C) of the Internal Revenue Code regarding tax imposed on distributions from the trust before becoming a citizen; and

(3) Subsection (1) of this section does not apply to:

(a) A trust: (i) That provides for a life estate or term of years for the exclusive benefit of the transferor's spouse, with the remainder payable to the such spouse's estate; or (ii) created exclusively for the benefit of the estate of the transferor's spouse; and

(b) An interest of the transferor's spouse in a charitable remainder annuity trust or charitable remainder unitrust described in section 664 of the Internal Revenue Code, if the transferor's spouse is the only noncharitable beneficiary. [1997 c 252 § 84; 1993 c 73 § 5; 1990 c 179 § 3; 1985 c 30 § 110. Prior: 1984 c 149 § 144.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.060 Marital deduction gift—Survivorship requirement—Limits—Property to be held in trust. For an estate that exceeds the amount exempt from tax by virtue of the unified credit under section 2010 of the Internal Revenue Code, if taking into account applicable adjusted taxable gifts as defined in section 2001(b) of the Internal Revenue Code, any marital deduction gift that is conditioned upon the transferor's spouse surviving the transferor for a period of more than six months, is governed by the following:

(1) A survivorship requirement expressed in the governing instrument in excess of six months, other than survival by a spouse of a common disaster resulting in the death of the transferor, does not apply to property passing under the marital deduction gift, and for the gift, the survivorship requirement is limited to a six-month period beginning with the transferor's death.

(2) The property that is the subject of the marital deduction gift must be held in a trust meeting the requirements of section 2056(b)(7) of the Internal Revenue Code the corpus of which must: (a) Pass as though the spouse failed to survive the transferor if the spouse, in fact, fails to survive the term specified in the governing instrument; and (b) pass to the spouse under the terms of the governing instrument if the spouse, in fact, survives the term specified in the governing instrument. [1997 c 252 § 86; 1989 c 35 § 1; 1985 c 30 § 111. Prior: 1984 c 149 § 145.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.900 Application of chapter. This chapter applies to all estates, trusts, and governing instruments in existence on or any time after March 7, 1984, and to all proceedings with respect thereto after that date, whether the proceedings commenced before or after that date, and including distributions made after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96 RCW apply to this chapter. [1985 c 30 § 112. Prior: 1984 c 149 § 146.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.110 CHARITABLE TRUSTS

Sections

- 11.110.010 Purpose of chapter.
- 11.110.020 Definitions.
- 11.110.040 Information, documents, and reports are public records—
Inspection—Publication.
- 11.110.051 Registration of trustee—Requirements—Exception—
Application of chapter to nonregistered trustees.
- 11.110.060 Instrument establishing trust, inventory of assets, registration
status, successor trustee information, and amendments to
be filed.
- 11.110.070 Tax or information return or report—Filing—Rules—Forms.
- 11.110.075 Trust not exclusively for charitable purposes—Instrument
and information not public—Access.
- 11.110.090 Uniformity of chapter with laws of other states.
- 11.110.100 Investigations by attorney general authorized—Appearance
and production of books, papers, documents, etc., may
be required.
- 11.110.110 Order to appear—Effect—Enforcement—Appellate review.
- 11.110.120 Proceedings to secure compliance and proper trust adminis-
tration—Attorney general to be notified of judicial pro-
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- 11.110.900 Severability—1967 ex.s. c 53.

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11.110.010 Purpose of chapter. The purpose of this chapter is to facilitate public supervision over the administration of public charitable trusts and similar relationships and to clarify and implement the powers and duties of the attorney general and the secretary of state with relation thereto. [1993 c 471 § 25; 1985 c 30 § 113. Prior: 1967 ex.s. c 53 § 1. Formerly RCW 19.10.010.]

Severability—Effective date—1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

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

"Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

"Trustee" means (1) any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions; and (2) a corporation formed for the administration of a charitable trust or holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes: PROVIDED, That the term "trustee" does not apply to (a) religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax exempt status from the government of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes: PROVIDED, That if such organization has not received from the United States government a declaration of current tax exempt status prior to the time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or (b) an educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts. [1985 c 30 § 114. Prior: 1971 ex.s. c 226 § 1; 1967 ex.s. c 53 § 2. Formerly RCW 19.10.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.040 Information, documents, and reports are public records—Inspection—Publication. All information, documents, and reports filed with the secretary of state under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation: PROVIDED, That the secretary of state shall withhold from public inspection any trust instrument so filed whose content is not exclusively for charitable purposes. The secretary of state may publish, on a periodic or other basis, such information as may be necessary or appropriate in the public interest

concerning the registration, reports, and information filed with the secretary of state or any other matters relevant to the administration and enforcement of this chapter. [1993 c 471 § 26; 1985 c 30 § 115. Prior: 1967 ex.s. c 53 § 4. Formerly RCW 19.10.040.]

Severability—Effective date—1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.051 Registration of trustee—Requirements—Exception—Application of chapter to nonregistered trustees. (1) Except as provided in subsection (2) of this section, a trustee, as defined by RCW 11.110.020, must register with the secretary of state if, as to a particular charitable trust:

(a) The trustee holds assets in trust, invested for income-producing purposes, exceeding a value established by the secretary of state by rule;

(b) Under the terms of the trust all or part of the principal or income of the trust can or must currently be expended for charitable purposes; and

(c) The trust instrument does not require the distribution of the entire trust corpus within a period of one year or less.

(2) A trustee of a trust, in which the only charitable interest is in the nature of a remainder, is not required to register during any life estate or other term that precedes the charitable interest. This exclusion from registration applies to trusts which have more than one noncharitable life income beneficiary, even if the death of one such beneficiary obligates the trustee to distribute a remainder interest to charity.

(3) A trustee of a charitable trust that is not required to register pursuant to this section is subject to all requirements of this chapter other than those governing registration and reporting to the secretary of state. [1997 c 124 § 1.]

11.110.060 Instrument establishing trust, inventory of assets, registration status, successor trustee information, and amendments to be filed. (1) Every trustee required to file under RCW 11.110.051 shall file with the secretary of state within four months after receiving possession or control of the trust corpus, or after the trust becomes a trust described by RCW 11.110.051(1):

(a) A copy of the instrument establishing his or her title, powers, or duties;

(b) An inventory of the assets of such charitable trust; and

(c) A registration form setting forth the trustee's name, mailing address, physical address if different, and additional identifying information required by the secretary by rule.

(2) A successor trustee to a previously registered trust shall file a registration form and inventory of assets within four months after receiving possession or control of the trust corpus.

(3) A trustee required to register shall file with the secretary of state copies of all amendments to the trust instrument within four months of the making of the amendment. [1997 c 124 § 2; 1993 c 471 § 28; 1985 c 30 § 117. Prior: 1984 c 149 § 150; 1971 ex.s. c 226 § 2; 1967 ex.s. c 53 § 6. Formerly RCW 19.10.060.]

Severability—Effective date—1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.070 Tax or information return or report—Filing—Rules—Forms. Every trustee required to register under RCW 11.110.051 shall file with the secretary of state a copy of each publicly available United States tax or information return or report of the trust at the time that the trustee files with the internal revenue service. The secretary may provide by rule for the exemption from reporting under this section by some or all trusts not required to file a federal tax or information return, and for a substitute form containing similar information to be used by any trusts not so exempted. [1997 c 124 § 3; 1993 c 471 § 29; 1985 c 30 § 118. Prior: 1971 ex.s. c 226 § 3; 1967 ex.s. c 53 § 7. Formerly RCW 19.10.070.]

Severability—Effective date—1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.075 Trust not exclusively for charitable purposes—Instrument and information not public—Access. A trust is not exclusively for charitable purposes, within the meaning of RCW 11.110.040, when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such purposes is not charitable within the meaning of RCW 11.110.020, as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the secretary of state and no information as to such noncharitable purpose shall be made public. The attorney general shall have free access to such information. [1997 c 124 § 4; 1993 c 471 § 30; 1985 c 30 § 120. Prior: 1984 c 149 § 154; 1971 ex.s. c 226 § 5. Formerly RCW 19.10.075.]

Severability—Effective date—1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.090 Uniformity of chapter with laws of other states. It is the purpose of this chapter to make uniform the laws of this and other states on the subject of charitable trusts and similar relationships. Recognizing the necessity for uniform application and enforcement of this chapter, its provisions are hereby declared mandatory and they shall not be superseded by the provisions of any trust instrument or similar instrument to the contrary. [1985 c 30 § 122. Prior: 1967 ex.s. c 53 § 9. Formerly RCW 19.10.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.100 Investigations by attorney general authorized—Appearance and production of books, papers, documents, etc., may be required. The attorney general may investigate transactions and relationships of

trustees and other persons subject to this chapter for the purpose of determining whether the trust or other relationship is administered according to law and the terms and purposes of the trust, or to determine compliance with this chapter in any other respect. He may require any officer, agent, trustee, fiduciary, beneficiary, or other person, to appear, at a time and place designated by the attorney general in the county where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear. [1985 c 30 § 123. Prior: 1967 ex.s. c 53 § 10. Formerly RCW 19.10.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.110 Order to appear—Effect—Enforcement—Appellate review. When the attorney general requires the attendance of any person, as provided in RCW 11.110.100, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals. [1988 c 202 § 20; 1985 c 30 § 124. Prior: 1984 c 149 § 157; 1971 c 81 § 64; 1967 ex.s. c 53 § 11. Formerly RCW 19.10.110.]

Rules of court: *Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.*

Severability—1988 c 202: See note following RCW 2.24.050.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.120 Proceedings to secure compliance and proper trust administration—Attorney general to be notified of judicial proceedings involving charitable trust—Powers and duties additional. The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in RCW 11.96.100, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general

provided in this chapter are in addition to his existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it. [1985 c 30 § 125. Prior: 1984 c 149 § 158; 1967 ex.s. c 53 § 12. Formerly RCW 19.10.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.125 Violations—Refusal to file reports, perform duties, etc. The willful refusal by a trustee to make or file any report or to perform any other duties expressly required by this chapter, or to comply with any valid rule adopted by the secretary of state under this chapter, shall constitute a breach of trust and a violation of this chapter. [1993 c 471 § 32; 1985 c 30 § 126. Prior: 1971 ex.s. c 226 § 6. Formerly RCW 19.10.125.]

Severability—Effective date—1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.130 Violations—Civil action may be prosecuted. A civil action for a violation of this chapter may be prosecuted by the attorney general or by a prosecuting attorney. [1993 c 471 § 33; 1985 c 30 § 127. Prior: 1967 ex.s. c 53 § 13. Formerly RCW 19.10.130.]

Severability—Effective date—1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.140 Penalty. Every false statement of material fact knowingly made or caused to be made by any person in any statement or report filed under this chapter and every other violation of this chapter is a gross misdemeanor. [1985 c 30 § 128. Prior: 1967 ex.s. c 53 § 14. Formerly RCW 19.10.140.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.200 Tax Reform Act of 1969, state implementation—Application of RCW 11.110.200 through 11.110.260 to certain trusts defined in federal code. RCW 11.110.200 through 11.110.260 shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code, or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code. With respect to any such trust created after December 31, 1969, RCW 11.110.200 through 11.110.260 shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW 11.110.200 through 11.110.260 shall apply only to such trust's federal taxable years beginning after December

31, 1971. [1993 c 73 § 6; 1985 c 30 § 129. Prior: 1984 c 149 § 161; 1971 c 58 § 1. Formerly RCW 19.10.200.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.210 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain prohibiting provisions. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing," as defined in section 4941(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code;

(2) Retaining any "excess business holdings," as defined in section 4943(c) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and

(4) Making any "taxable expenditures," as defined in section 4945(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code:

PROVIDED, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code. [1993 c 73 § 7; 1985 c 30 § 130. Prior: 1984 c 149 § 162; 1971 c 58 § 2. Formerly RCW 19.10.210.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.220 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain certain provisions for distribution. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code. [1993 c 73 § 8; 1985 c 30 § 131. Prior: 1984 c 149 § 163; 1971 c 58 § 3. Formerly RCW 19.10.220.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.230 Tax Reform Act of 1969, state implementation—Rights, powers, of courts, attorney general, not impaired. Nothing in RCW 11.110.200 through 11.110.260 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

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[1985 c 30 § 132. Prior: 1984 c 149 § 164; 1971 c 58 § 4. Formerly RCW 19.10.230.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.250 Tax Reform Act of 1969, state implementation—Application to trust created after June 10, 1971, or amendment to existing trust. Nothing in RCW 11.110.200 through 11.110.260 shall limit the power of a person who creates a trust after June 10, 1971 or the power of a person who has retained or has been granted the right to amend a trust created before June 10, 1971, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of RCW 11.110.210 and 11.110.220 shall have no application to such trust. [1985 c 30 § 134. Prior: 1984 c 149 § 167; 1971 c 58 § 6. Formerly RCW 19.10.250.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.260 Tax Reform Act of 1969, state implementation—Severability—RCW 11.110.200 through 11.110.260. If any provision of RCW 11.110.200 through 11.110.260 or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of RCW 11.110.200 through 11.110.260 which can be given effect without the invalid provision or application, and to this end the provisions of RCW 11.110.200 through 11.110.260 are declared to be severable. [1985 c 30 § 135. Prior: 1984 c 149 § 168; 1971 c 58 § 7. Formerly RCW 19.10.260.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.270 Tax Reform Act of 1969, state implementation—Not for profit corporations. See RCW 24.40.010 through 24.40.070.

11.110.900 Severability—1967 ex.s. c 53. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1985 c 30 § 136. Prior: 1967 ex.s. c 53 § 15. Formerly RCW 19.10.900.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.114

UNIFORM TRANSFERS TO MINORS ACT

Sections

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

(1) "Adult" means an individual who has attained the age of twenty-one years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Guardian" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions. Conservator means guardian for transfers made under another state's law but enforceable in this state's courts.

(5) "Court" means a superior court of the state of Washington.

(6) "Custodial property" means (a) any interest in property transferred to a custodian under this chapter and (b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under RCW 11.114.090 or a successor or substitute custodian designated under RCW 11.114.180.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or guardian.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-one years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(14) "Transfer" means a transaction that creates custodial property under RCW 11.114.090.

(15) "Transferor" means a person who makes a transfer under this chapter.

(16) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers. [1991 c 193 § 1.]

11.114.020 Scope and jurisdiction. (1) This chapter applies to a transfer that refers to this chapter in the designation under RCW 11.114.090(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(4) A matter under this chapter subject to court determination is governed by the procedures provided in chapter 11.96 RCW. However, no guardian ad litem is required for the minor, except under RCW 11.114.190(1), in the case of a petition by a unrepresented minor under the age of fourteen years. [1991 c 193 § 2.]

11.114.030 Nomination of custodian—Designation of custodian by representative or specified person. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act." The nomination may name one or more persons as substitute custodians to whom the property shall be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

As an alternative to naming a specific person as custodian, the nomination may provide that the custodian may be designated by the legal representative of, or other

person specified by, the person having the right to designate the recipient of the property described in this subsection. The person having the right of designation of the custodian is authorized to designate himself or herself as custodian, if he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) A custodian nominated under this section shall be a person to whom a transfer of property of that kind may be made under RCW 11.114.090(1).

(3) Instead of designating one specific minor, the designation may specify multiple persons or a class or classes of persons, but when the custodial property is actually created under subsection (4) of this section, it must be constituted as a separate custodianship for each beneficiary, and each beneficiary's interest in it must be determined in accordance with the governing instrument and applicable law.

(4) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under RCW 11.114.090. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to RCW 11.114.090. [1998 c 292 § 301; 1991 c 193 § 3.]

Retroactive application—1998 c 292: See note following RCW 11.54.070.

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

11.114.040 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to RCW 11.114.090. [1991 c 193 § 4.]

11.114.050 Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer pursuant to RCW 11.114.090 to a custodian for the benefit of a minor as authorized in the governing will or trust. The personal representative or trustee may designate himself or herself as custodian provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) If the testator or grantor has nominated a custodian under RCW 11.114.030 to receive the custodial property, the transfer shall be made to that person.

(3) If the testator or grantor has not nominated a custodian under RCW 11.114.030, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under RCW 11.114.090(1). The personal representative or trustee may designate himself or herself as custodian, provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1). [1991 c 193 § 5.]

11.114.060 Other transfer by fiduciary. (1) A personal representative or trustee may make an irrevocable transfer to an adult or trust company for the benefit of a minor pursuant to RCW 11.114.090, in the absence of a will or under a will or trust that does not contain an authorization to do so, but only if:

(a) The personal representative or trustee, or the court if an order is requested under (c) of this subsection, considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust instrument, or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds thirty thousand dollars in value.

The personal representative, the trustee, or a member of the minor's family may select the custodian, subject to court approval. The personal representative or trustee may serve as custodian, provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) A member of the minor's family may request that the court establish a custodianship if a custodianship has not already been established, regardless of the value of the transfer. [1991 c 193 § 6.]

11.114.070 Transfer by obligor. (1) Subject to subsections (2) and (3) of this section, a person not subject to RCW 11.114.050 or 11.114.060 who holds property or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to RCW 11.114.090.

(2) If a person having the right to do so under RCW 11.114.030 has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

(3) If no custodian has been nominated under RCW 11.114.030, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds thirty thousand dollars in value.

(4) A member of the minor's family or the person who holds the property of the minor or who owes a debt to the minor may request that the court establish a custodianship if not previously established, regardless of the value of the transfer. [1991 c 193 § 7.]

11.114.080 Receipt for custodial property. A written confirmation of delivery by a custodian constitutes a sufficient receipt and discharge of the transferor for custodial property transferred to the custodian under this chapter. [1991 c 193 § 8.]

11.114.090 Manner of creating custodial property and effecting transfer—Designation of initial custodian—Control. (1) Custodial property is created and a transfer is made if:

(a) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in

substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(g) An interest in any property not described in (a) through (f) of this subsection is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of subsection (1)(a)(ii) and (g) of this section:

"TRANSFER UNDER THE WASHINGTON UNIFORM TRANSFERS TO MINORS ACT

I, (name of transferor or name and representative capacity if a fiduciary) hereby transfer to (name of custodian), as custodian for (name of minor) under the Washington uniform transfers to minors act, the following: (insert a description of the custodial property sufficient to identify it).

Dated:
.

(Signature)

. (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Washington uniform transfers to minors act.

Dated:
. "

(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable. [1991 c 193 § 9.]

11.114.100 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship. [1991 c 193 § 10.]

11.114.110 Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) Failure of the transferor to comply with RCW 11.114.090(3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under RCW 11.114.090(1); or

(c) Death or incapacity of a person nominated under RCW 11.114.030 or designated under RCW 11.114.090 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to RCW 11.114.090 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter. [1991 c 193 § 11.]

11.114.120 Care of custodial property. (1) A custodian shall, as soon as custodial property is made available to the custodian:

(a) Take control of custodial property;

(b) Register or record title to custodial property if appropriate; and

(c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care applicable to fiduciaries under chapter 11.100 RCW. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor according to the same standards as apply to a fiduciary holding trust funds under RCW 11.100.060. However, the provisions of RCW 11.100.025, 11.100.040, and 11.100.140 shall not apply to a custodian.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available upon request for inspection by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years. [1991 c 193 § 12.]

11.114.130 Powers of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, including without limitation all the powers granted to a trustee under RCW 11.98.070, but a custodian may exercise those rights, powers, and authority only in a custodial capacity.

(2) This section does not relieve a custodian from liability for breach of RCW 11.114.120. [1991 c 193 § 13.]

11.114.140 Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to support the minor, or (b) any other income or property of

the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor. [1991 c 193 § 14.]

11.114.150 Custodian's expenses, compensation, and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under RCW 11.114.040, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in RCW 11.114.180(6), a custodian need not give a bond.

(4) Notwithstanding RCW 11.114.190, a custodian not compensated for services is not liable for losses to the custodial property unless they result from bad faith, intentional wrongdoing, or gross negligence, or from failure to maintain the standard of prudence in investing the custodial property provided in this chapter. [1991 c 193 § 15.]

11.114.160 Exemption of third person from liability. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian or successor custodian and, in the absence of knowledge, is not responsible for determining:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under this chapter for, any act of the purported custodian;

(3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian. [1991 c 193 § 16.]

11.114.170 Liability to third persons. (1) A claim based on:

(a) A contract entered into by a custodian acting in a custodial capacity;

(b) An obligation arising from the ownership or control of custodial property;

(c) A tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor; or

(d) A noncontractual obligation, including obligations in tort, is collectible from the custodial property only if:

(i) The obligation was a common incident of the kind of business activity in which the custodian or the custodian's predecessor was properly engaged for the custodianship;

(ii) Neither the custodian nor the custodian's predecessor, nor any officer or employee of the custodian or the custodian's predecessor was personally at fault in incurring the obligation; or

(iii) Although the obligation did not fall within (d)(i) or (ii) of this subsection, the incident that gave rise to the obligation increased the value of the custodial property.

If the obligation is within (d)(i) or (ii) or [of] this subsection, collection may be had of the full amount of damage proved. If the obligation is within (d)(iii) of this subsection, collection may be had only to the extent of the increase in the value of the trust property.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity. The addition of the words "custodian" or "as custodian" after the signature of a custodian is adequate revelation of this capacity; or

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodial property is not liable for the obligation under *(b) of this subsection and unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault. [1991 c 193 § 17.]

***Reviser's note:** The reference to (b) of this subsection appears erroneous. Reference to subsection (1)(b) of this section was apparently intended.

11.114.180 Renunciation, resignation, death, or removal of custodian—Designation of successor custodian.

(1) A person nominated under RCW 11.114.030 or designated under RCW 11.114.090 as custodian may decline to serve. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under RCW 11.114.030, the person who made the nomination may nominate a substitute custodian under RCW 11.114.030; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under RCW 11.114.090(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under RCW 11.114.040 as successor custodian by executing and dating an instrument of designation. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed, and custodial property is transferred to the successor custodian.

(3) A custodian may resign at any time by delivering written notice to the minor, if the minor has attained the age of fourteen years, and to the successor custodian, and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated and no successor custodian has been designated as provided in this chapter, and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a guardian of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under RCW 11.114.040 or to require the custodian to give appropriate bond. [1991 c 193 § 18.]

11.114.190 Accounting by and determination of liability of custodian.

(1) A minor who has attained the age of fourteen years, the minor's legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under RCW 11.114.170 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under RCW 11.114.180(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property. [1991 c 193 § 19.]

11.114.200 Termination of custodianship. Subject to RCW 11.114.220, the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of twenty-one years of age with respect to custodial property transferred under RCW 11.114.040 or 11.114.050;

(2) The minor's attainment of eighteen years of age with respect to custodial property transferred under RCW 11.114.060 or 11.114.070; or

(3) The minor's death. [1991 c 193 § 20.]

11.114.210 Applicability. This chapter applies to a transfer within the scope of RCW 11.114.020 made after July 1, 1991, if:

(1) The transfer purports to have been made under the Washington uniform gifts to minors act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state, and the application of this chapter is necessary to validate the transfer. [1991 c 193 § 21.]

11.114.220 Effect on existing custodianships. (1) Any transfer of custodial property as now defined in this chapter made before July 1, 1991, is validated notwithstanding that there was no specific authority in the Washington uniform gifts to minors act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before July 1, 1991, in a manner and form prescribed in the Washington uniform gifts to minors act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1991. However, as to any custodianship established after August 9, 1971, but prior to January 1, 1985, a minor has the right after attaining the age of eighteen to demand delivery from the custodian of all or any portion of the custodial property. [1991 c 193 § 22.]

11.114.230 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1991 c 193 § 23.]

11.114.900 Short title. This chapter may be cited as the uniform transfers to minors act. [1991 c 193 § 24.]

11.114.901 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 193 § 25.]

11.114.902 Savings—1991 c 193. To the extent that this chapter, by virtue of RCW 11.114.220(2), does not apply to transfers made in a manner prescribed in the uniform gifts to minors act of Washington or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the uniform gifts to minors act of Washington does not affect those transfers or those powers, duties, and immunities. [1991 c 193 § 26.]

11.114.903 Effective date—1991 c 193. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991. [1991 c 193 § 34.]

11.114.904 Severability—1991 c 193. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 193 § 35.]

Title 12

DISTRICT COURTS—CIVIL PROCEDURE

Chapters

- 12.04 Commencement of actions.**
- 12.08 Pleadings.**
- 12.12 Trial.**
- 12.16 Witnesses and depositions.**
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District and other inferior courts—1961 Act: Chapter 3.30 RCW.
Garnishment: Chapter 6.27 RCW.
General provisions regarding district judges: Title 3 RCW.
Jurisdiction of justice of the peace: State Constitution Art. 4 § 10 (Amendment 28).
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Chapter 12.04 COMMENCEMENT OF ACTIONS

Sections

- 12.04.010 Civil actions—Commencement.
- 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—Who may serve.
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- 12.04.070 Process—Return—Fees.
- 12.04.080 Process—Service by person appointed by justice—Return—Exceptions.
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- 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.

Reviser's note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

12.04.010 Civil actions—Commencement. 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—Who may serve. All process issued by district court judges of the state and all executions and writs of attachment or of replevin shall be served by a sheriff or a deputy, 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. [1987 c 442 § 1102; 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 newspaper of general circulation in the county wherein the action is commenced, 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 the notice.

The 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.

[1985 c 469 § 6; 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. Except as provided under RCW 26.50.020, 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 or her next friend in such action, who shall be responsible for the costs therein. [1992 c 111 § 10; 1971 ex.s. c 292 § 75; Code 1881 § 1753; 1873 p 343 § 52; 1854 p 230 § 40; RRS § 1771.]

Severability—1992 c 111: See RCW 26.50.903.

Findings—1992 c 111: See note following RCW 26.50.030.

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, except as provided under RCW 26.50.020. 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 or she 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. [1992 c 111 § 11; 1971 ex.s. c 292 § 76; Code 1881 § 1754; 1873 p 343 § 53; 1854 p 230 § 41; RRS § 1772.]

Severability—1992 c 111: See RCW 26.50.903.

Findings—1992 c 111: See note following RCW 26.50.030.

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—Pleading.

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—Pleading. 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.]

Reviser's note: Justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

Chapter 12.12 TRIAL

Sections

12.12.010	Continuances limited.
12.12.020	Trial by justice.
12.12.030	Jury—Number—Qualifications—Fee.
12.12.070	Oath administered.
12.12.080	Delivery of verdict.
12.12.090	Discharge of jury.

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 persons having the qualifications of jurors in the superior court of the same county, unless the parties shall agree upon a lesser number: PROVIDED, That the party demanding the jury shall first pay to the justice the sum of twenty-five dollars, which shall be paid over by the justice to the county, and said amount shall be taxed as costs against the losing party. [1981 c 260 § 3. Prior: 1977 ex.s. c 248 § 2; 1977 ex.s. c 53 § 2; 1888

p 118 § 1; Code 1881 § 1770; 1863 p 438 § 51; 1862 p 58 § 1; 1854 p 235 § 70; RRS § 1849.]

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.]

Chapter 12.16

WITNESSES AND DEPOSITIONS

Sections

- 12.16.015 District court may compel attendance of witness.
- 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.

Oaths and affirmations: Chapter 5.28 RCW.

12.16.015 District court may compel attendance of witness. Any person may be compelled to attend as a witness before a district court in accordance with chapter 5.56 RCW. [1984 c 258 § 702.]

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

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.]

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.

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.]

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.]

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.

Reviser's note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

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.]

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 in district court is entitled to recover costs as authorized in RCW 4.84.010 in a civil action, the judge shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the judge shall enter up a judgment in favor of the defendant for the amount of his or her costs; and in case any party so entitled to costs is represented in the action by an attorney, the judge shall include attorney's fees of one hundred twenty-five dollars as part of the costs: PROVIDED, HOWEVER, That the plaintiff shall not be entitled to such attorney fee unless he or she obtains, exclusive of costs, a judgment in the sum of fifty dollars or more. [1993 c 341 § 1; 1985 c 240 § 2; 1984 c 258 § 89; 1975-'76 2nd ex.s. c 30 § 1; 1915 c 43 § 1; 1893 c 12 § 1; Code 1881 § 1785; 1873 p 350 § 84; 1854 p 237 § 85; RRS § 1862.]

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

Attorneys' fee as costs in damage actions of ten thousand dollars or less: RCW 4.84.250 through 4.84.300.

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 12.28 REPLEVIN

Sections

12.28.005 Chapter 7.64 RCW available to plaintiff in action to recover possession of personal property.

12.28.005 Chapter 7.64 RCW available to plaintiff in action to recover possession of personal property. The plaintiff in an action to recover the possession of personal property may claim and obtain the immediate delivery of the property, after a hearing, as provided in chapter 7.64 RCW. [1979 ex.s. c 132 § 8.]

Severability—1979 ex.s. c 132: See RCW 7.64.900.

Chapter 12.36 SMALL CLAIMS APPEALS (Formerly: Appeals)

Sections

12.36.010 Appeal in small claims action authorized.
12.36.020 Appeal—Procedure—Notice filing—Fee—Bond or undertaking—Service—Costs of record preparation.
12.36.030 Stay of proceedings—Procedures—Return of property upon stay—Enforcement upon denial.
12.36.050 Certification of record by district court—Transmittal to superior court—Powers of superior court upon transmittal.
12.36.055 Trial in superior court.
12.36.080 No dismissal for defective bond—Notice.
12.36.090 Judgment against appellant and sureties.

Costs in appeal from district courts: RCW 4.84.130.

12.36.010 Appeal in small claims action authorized. Any person wishing to appeal a judgment or decision in a small claims action may, in person or by his or her agent, appeal 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, exceeds two hundred fifty dollars: PROVIDED FURTHER, That an appeal from the court's determination or order on a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). [1997 c 352 § 7; 1979 ex.s. c 136 § 21; 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.]

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

12.36.020 Appeal—Procedure—Notice filing—Fee—Bond or undertaking—Service—Costs of record preparation. (1) To appeal a judgment or decision in a small claims action, an appellant shall file a notice of appeal in the district court, pay the statutory superior court filing fee, post the required bond or undertaking, and serve a copy of the notice of appeal on all parties of record within thirty days after the judgment is rendered or decision made.

(2) No appeal may be allowed, nor proceedings on the judgment or decision stayed, unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the district court. The bond or undertaking shall be executed with two or more personal sureties, or a surety company as surety, to be approved by the district court, in a sum equal to twice the amount of the judgment and costs, or twice the amount in controversy, whichever is greater, conditioned that the appellant will pay any judgment, including costs, as may be rendered on appeal. No bond is required if the appellant is a county, city, town, or school district.

(3) When an appellant has filed a notice of appeal, paid the statutory superior court filing fee and the costs of preparation of the complete record as set forth in RCW 3.62.060(7), and posted the bond or undertaking as required, the clerk of the district court shall immediately file a copy of the notice of appeal, the filing fee, and the bond or undertaking with the superior court. [1998 c 52 § 1; 1997 c 352 § 8; 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—Procedures—Return of property upon stay—Enforcement upon denial. When an appeal and any necessary bond or undertaking are properly filed in superior court pursuant to RCW 12.36.020(3), the appellant may move in superior court to stay all further proceedings in the district court. If the stay is granted, all further proceedings in district court on the judgment shall be suspended. If proceedings have commenced on motion of the appellant the court may order the proceedings halted and such process recalled.

If any property is held pursuant to such proceedings at the time the stay is granted and the process recalled, such property shall be returned immediately to the party entitled to such property.

If the requested stay is denied, or no stay is requested, the judgment will be enforced in superior court in the same manner as any other judgment rendered in that court. [1998 c 52 § 2; 1997 c 352 § 9; 1929 c 58 § 3; RRS § 1912. Prior: Code 1881 § 1861; 1873 p 368 § 160; 1854 p 252 § 164.]

12.36.050 Certification of record by district court—Transmittal to superior court—Powers of superior court upon transmittal. (1) Within fourteen days after a small claims appeal has been filed in superior court by the clerk of the district court pursuant to RCW 12.36.020(3), the complete record as defined in subsection (2) of this section shall

be made and certified by the clerk of the district court to be correct. The clerk shall then immediately transmit the complete record to superior court. The superior court shall then become possessed of the cause. All further proceedings shall be in the superior court, including enforcement of any judgment rendered. Any mandatory superior court procedures such as arbitration or other dispute resolution will apply as if the cause was originally filed in superior court. The statute governing the trial de novo shall only apply to those cases set for trial after compliance with superior court procedures.

(2) The complete record shall consist of a transcript of all entries made in the district court docket relating to the case, together with all the process and other papers relating to the case filed with the district court and any contemporaneous recording made of the proceeding. [1998 c 52 § 3; 1997 c 352 § 10; 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.]

12.36.055 Trial in superior court. (1) The appeal from a small claims judgment or decision shall be a trial de novo in superior court. A trial de novo pursuant to this chapter shall be tried as nearly as possible in the manner of the original small claims trial. No jury may be allowed, or attorney or legal paraprofessional involved, without written order of the superior court, unless allowed in the original trial. No new pleadings other than the notice of appeal may be allowed without written permission of the superior court. Each party shall be allowed equal time, but no more than thirty minutes each without permission of the superior court. No new or other evidence, nor new or other testimony may be presented other than at the trial in small claims court, without permission of the superior court.

(2) Any cases heard in superior court pursuant to this section may be heard by a duly appointed commissioner. As used in this chapter "judge" includes any duly appointed commissioner. [1997 c 352 § 11.]

12.36.080 No dismissal for defective bond—Notice. No appeal under this chapter shall be dismissed on account of any defect in the bond on appeal, if, within ten days of notice to appellant of such defect, the appellant executes and files in the court currently possessed of the cause such bond as should have been executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect. [1998 c 52 § 4; 1997 c 352 § 12; 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 under this chapter, if the judgment is against the appellant, in whole or in part, such judgment shall be rendered against the appellant and his or her sureties on the bond on appeal. [1997 c 352 § 13; 1929 c 58 § 8; RRS § 1918. Prior: Code 1881 § 1867; 1873 p 369 § 166; 1854 p 253 § 170.]

Chapter 12.40 SMALL CLAIMS

Sections

12.40.010	Department authorized—Jurisdictional amount.
12.40.020	Action—Commencement—Fee.
12.40.025	Transfer of action to small claims department.
12.40.027	Removal to superior court—Restrictions—Simultaneous maintenance of claims—Joinder of claims on appeal.
12.40.030	Setting case for hearing—Notice—Time of trial.
12.40.040	Service of notice of claim—Fee.
12.40.045	Recovery of fees as court costs.
12.40.050	Requisites of claim.
12.40.060	Requisites of notice.
12.40.070	Verification of claim.
12.40.080	Hearing.
12.40.090	Informal pleadings.
12.40.100	Payment of monetary judgment.
12.40.105	Increase of judgment upon failure to pay.
12.40.110	Procedure on nonpayment.
12.40.120	Appeals—Setting aside judgments.
12.40.800	Small claims informational brochure—Preparation and distribution.

12.40.010 Department authorized—Jurisdictional amount. In every district court there shall be created and organized by the court a department to be known as the "small claims department of the district court". The small claims department shall have jurisdiction, but not exclusive, in cases for the recovery of money only if the amount claimed does not exceed two thousand five hundred dollars. [1991 c 71 § 1; 1988 c 85 § 1; 1984 c 258 § 57; 1981 c 331 § 10; 1979 c 102 § 4; 1973 c 128 § 1; 1970 ex.s. c 83 § 1; 1963 c 123 § 1; 1919 c 187 § 1; RRS § 1777-1.]

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

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Application, savings—Effective date—Severability—1979 c 102: See notes following RCW 3.66.020.

12.40.020 Action—Commencement—Fee. A small claims action shall be commenced by the plaintiff filing a claim, in the form prescribed by RCW 12.40.050, in the small claims department. A filing fee of ten dollars plus any surcharge authorized by RCW 7.75.035 shall be paid when the claim is filed. [1990 c 172 § 3; 1984 c 258 § 58; 1919 c 187 § 2; RRS § 1777-2.]

Effective date—1990 c 172: See note following RCW 7.75.035.

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

12.40.025 Transfer of action to small claims department. A defendant in a district court proceeding in which the claim is within the jurisdictional amount for the small claims department may in accordance with court rules transfer the action to the small claims department. 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. [1984 c 258 § 59; 1970 ex.s. c 83 § 2.]

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

12.40.027 Removal to superior court—Restrictions—Simultaneous maintenance of claims—Joinder of claims on appeal. RCW 4.14.010 regarding removal of actions to superior court shall not apply to cases originally filed in small claims court, or transferred to the small claims court pursuant to RCW 12.40.025. No defendant or third party defendant may remove a small claims case from small claims court as a matter of right by merely filing a claim or counterclaim or other request for relief that is beyond the jurisdiction of the small claims court. Claims, counterclaims, or other requests for relief filed by a defendant or third party defendant in excess of the jurisdiction of small claims court may be maintained simultaneously in superior court as a separate action brought by such defendant or third party defendant. Such a superior court action does not affect the jurisdiction of the small claims court to hear the original small claims case. The decision of the small claims court shall have no preclusive effect on a superior court action brought pursuant to this section. If the small claims case is appealed, it shall be automatically joined with any superior court case filed pursuant to this section, and the procedures set forth in RCW 12.36.055 shall not apply.

Nothing in this section may be construed to limit the small claims court from transferring a small claims case to district court or superior court after notice and hearing. [1997 c 352 § 5.]

12.40.030 Setting case for hearing—Notice—Time of trial. Upon filing of a claim, the court shall set a time for hearing on the matter. The court shall issue a notice of the claim which shall be served upon the defendant to notify the defendant of the hearing date. A trial need not be held on this first appearance, if dispute resolution services are offered instead of trial, or local practice rules provide that trials will be held on different days. [1997 c 352 § 1; 1984 c 258 § 60; 1981 c 330 § 3; 1980 c 162 § 11; 1963 c 123 § 2; 1919 c 187 § 3; RRS § 1777-3.]

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

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

Severability—1980 c 162: See note following RCW 3.02.010.

12.40.040 Service of notice of claim—Fee. The 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 if a return receipt with the signature of the party being served is filed with the court. No other legal document or process is to be served with the notice of claim. Information from the court regarding the small claims department, local small claims procedure, dispute resolution services, or other matters related to litigation in the small claims department may be included with the notice of claim when served.

The notice of claim shall be served promptly after filing the claim. Service must be complete at least ten days prior to the first hearing.

The person serving the notice of claim shall be entitled to receive from the plaintiff, besides mileage, the fee

specified in RCW 36.18.040 for such service; which sum, together with the filing fee set forth in RCW 12.40.020, shall be added to any judgment given for plaintiff. [1997 c 352 § 2; 1984 c 258 § 61; 1981 c 194 § 3; 1970 ex.s. c 83 § 3; 1959 c 263 § 9; 1919 c 187 § 4; RRS § 1777-4.]

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

Severability—1981 c 194: See note following RCW 36.18.040.

12.40.045 Recovery of fees as court costs. In the event persons other than the sheriff or duly appointed deputies charge a fee for services in excess of the fees allowed under RCW 36.18.040, the prevailing party incurring such charges shall be entitled to recover as court costs only the amount of the fees for such services as provided in RCW 36.18.040. [1981 c 194 § 4.]

Severability—1981 c 194: See note following RCW 36.18.040.

12.40.050 Requisites of claim. A claim filed in the small claims department shall contain: (1) The name and address of the plaintiff; (2) a statement, in brief and concise form, of the nature and amount of the claim and when the claim accrued; and (3) the name and residence of the defendant, if known to the plaintiff, for the purpose of serving the notice of claim on the defendant. [1984 c 258 § 62; 1919 c 187 § 5; RRS § 1777-5.]

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

12.40.060 Requisites of notice. The notice of claim directed to the defendant shall contain: (1) The name and address of the plaintiff; (2) a brief and concise statement of the nature and amount of the claim; (3) a statement directing and requiring defendant to appear personally in the small claims department at a time certain, which shall not be less than five days from the date of service of the notice; and (4) a statement advising the defendant that in case of his or her failure to appear, judgment will be given against defendant for the amount of the claim. [1984 c 258 § 63; 1981 c 331 § 11; 1919 c 187 § 6; RRS § 1777-6.]

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

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

12.40.070 Verification of claim. A claim must be verified by the real claimant, and no claim shall be filed or prosecuted in the small claims department by the assignee of the claim. [1984 c 258 § 64; 1919 c 187 § 7; RRS § 1777-7.]

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

12.40.080 Hearing. (1) No attorney at law, legal paraprofessional, nor any person other than the plaintiff and defendant, shall appear or participate with the prosecution or defense of litigation in the small claims department without the consent of the judicial officer hearing the case. A corporation may not be represented by an attorney at law or legal paraprofessional except as set forth in RCW 12.40.025.

(2) In the small claims department it shall not 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 trial.

(3) The judge may informally consult witnesses or otherwise investigate the controversy between the parties and give judgment or make such orders as the judge may deem to be right, just, and equitable for the disposition of the controversy. [1997 c 352 § 3; 1991 c 71 § 2; 1984 c 258 § 65; 1981 c 331 § 12; 1919 c 187 § 8; RRS § 1777-8.]

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

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

12.40.090 Informal pleadings. A formal pleading, other than the claim and notice, shall not be necessary to define the issue between the parties. The hearing and disposition of the actions shall be informal, with the sole object of dispensing speedy and quick justice between the litigants. An attachment, garnishment or execution shall not issue from the small claims department on any claim except as provided in this chapter. [1984 c 258 § 66; 1919 c 187 § 9; RRS § 1777-9.]

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

12.40.100 Payment of monetary judgment. If a monetary judgment or order is entered, it shall be the judgment debtor's duty to pay the judgment upon such terms and conditions as the judge shall prescribe. If the judgment is not paid to the prevailing party at the time the judgment is entered and the judgment debtor is present in court, the court may order a payment plan. [1984 c 258 § 67; 1983 c 254 § 1; 1919 c 187 § 10; RRS § 1777-10.]

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

Effective date—1983 c 254: "This act shall take effect on January 1, 1984." [1983 c 254 § 5.]

12.40.105 Increase of judgment upon failure to pay. If the losing party fails to pay the judgment within thirty days or within the period otherwise ordered by the court, the judgment shall be increased by: (1) An amount sufficient to cover costs of certification of the judgment under RCW 12.40.110; and (2) the amount specified in RCW 36.18.012(2), without regard to the jurisdictional limits on the small claims department. [1998 c 52 § 5; 1995 c 292 § 5; 1983 c 254 § 2.]

Effective date—1983 c 254: See note following RCW 12.40.100.

12.40.110 Procedure on nonpayment. (1) If the losing party fails to pay the judgment according to the terms and conditions thereof within thirty days or is in arrears on any payment plan, and the prevailing party so notifies the court, the court shall certify the judgment in substantially the following form:

Washington.

In the District Court of . . . County.

..... Plaintiff,
vs.
..... Defendant.

In the Small Claims Department.

This is to certify that: (1) In a certain action on 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, judgment was entered against . . . in the sum of dollars; (2) the judgment has not been paid within twenty days or the period otherwise ordered by the court; and (3) pursuant to RCW 12.40.105, the amount of the judgment is hereby increased by any costs of certification under this section and the amount specified in RCW 36.18.012(2).

Witness my hand this . . . day of , 19. . .

.....
Clerk of the Small Claims Department.

(2) The clerk shall forthwith enter the judgment transcript on the judgment docket of the district court; and thereafter garnishment, execution, and other process on execution provided by law may issue thereon, as in other judgments of district courts.

(3) Transcripts of such judgments may be filed and entered in judgment lien dockets in superior courts with like effect as in other cases. [1998 c 52 § 6; 1995 c 292 § 6; 1984 c 258 § 68; 1983 c 254 § 3; 1975 1st ex.s. c 40 § 1; 1973 c 128 § 2; 1919 c 187 § 11; RRS § 1777-11.]

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

Effective date—1983 c 254: See note following RCW 12.40.100.

Inclusion of reasonable costs and attorneys' fees in execution: RCW 6.17.110.

12.40.120 Appeals—Setting aside judgments. No appeal shall be permitted from a judgment of the small claims department of the district court where the amount claimed was less than two hundred fifty dollars. No appeal shall be permitted by a party who requested the exercise of jurisdiction by the small claims department where the amount claimed by that party was less than one thousand dollars. A party in default may seek to have the default judgment set aside according to the court rules applicable to setting aside judgments in district court. [1997 c 352 § 4; 1988 c 85 § 2; 1984 c 258 § 69; 1970 ex.s. c 83 § 4.]

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

12.40.800 Small claims informational brochure—Preparation and distribution. The administrator for the courts and the district and municipal court judges' association shall prepare a model small claims informational brochure and distribute the model brochure to all small claims departments in the state. This brochure may be modified as necessary by each small claims department and shall be made available to all parties in any small claims action. [1994 c 32 § 7; 1988 c 85 § 3.]

Title 13

JUVENILE COURTS AND JUVENILE OFFENDERS

Chapters

- 13.04** Basic juvenile court act.
- 13.06** Juvenile offenders—Consolidated juvenile services programs.
- 13.16** Places of detention.
- 13.20** Management of detention facilities—Counties with populations of one million or more.
- 13.24** Interstate compact on juveniles.
- 13.32A** Family reconciliation act.
- 13.34** Juvenile court act—Dependency and termination of parent-child relationship.
- 13.40** Juvenile justice act of 1977.
- 13.50** Keeping and release of records by juvenile justice or care agencies.
- 13.60** Missing children clearinghouse.
- 13.64** Emancipation of minors.
- 13.70** Substitute care of children—Review board system.
- 13.80** Learning and life skills grant program.

Action against parent for willful injury to property by minor: RCW 4.24.190.

Age of majority: Chapter 26.28 RCW.

Alcoholic beverage control: Title 66 RCW.

Child

abuse: Chapter 26.44 RCW.

custody, action by relative: RCW 26.09.255.

domestic violence prevention: Chapter 26.50 RCW.

labor: Chapters 26.28, 28A.225, 49.12 RCW.

welfare agencies: Chapter 74.15 RCW.

Children and family services: Chapter 74.14A RCW.

Compulsory school attendance: Chapter 28A.225 RCW.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Firearms: RCW 9.41.080, 9.41.240.

Jurisdiction over Indians as to juvenile delinquency and dependent children: Chapter 37.12 RCW.

Juvenile laws and court processes and procedures—Informational materials: RCW 2.56.130.

Leaving children in parked automobile: RCW 9.91.060.

Out-of-home care—Social study required: RCW 74.13.065.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Public institutions, division of children and youth services: Chapter 72.05 RCW.

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.

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Chapter 13.04

BASIC JUVENILE COURT ACT

(Formerly: Juvenile courts)

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- 13.04.005 Short title.
- 13.04.011 Definitions.
- 13.04.021 Juvenile court—How constituted—Cases tried without jury.
- 13.04.030 Juvenile court—Exclusive original jurisdiction.
- 13.04.0301 Courts of limited jurisdiction—Concurrent jurisdiction with the juvenile court—Pilot project—Expiration.
- 13.04.033 Appeal of court order—Procedure—Priority, when.
- 13.04.035 Administrator of juvenile court, probation counselor, and detention services—Appointment.
- 13.04.037 Administrator—Adoption of standards for detention facilities for juveniles—Revision and inspection.
- 13.04.040 Administrator—Appointment of probation counselors and persons in charge of detention facilities—Powers and duties, compensation—Collection of fines.
- 13.04.043 Administrator—Obtaining interpreters.
- 13.04.047 Administrator or staff—Health and dental examination and care—Consent.
- 13.04.050 Expenses of probation officers.
- 13.04.093 Hearings—Duties of prosecuting attorney or attorney general.
- 13.04.116 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement.
- 13.04.135 Establishment of house or room of detention.
- 13.04.145 Educational program for juveniles in detention facilities.
- 13.04.155 Notification to school principal of conviction, adjudication, or diversion agreement—Provision of information to teachers and other personnel—Confidentiality.
- 13.04.160 Fees not allowed.
- 13.04.180 Board of visitation.
- 13.04.240 Court order not deemed conviction of crime.
- 13.04.300 Juvenile may be both dependent and an offender.
- 13.04.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders—Chapter 10.22 RCW does not apply to proceedings under chapter 13.40 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 children with disabilities: Chapter 28A.155 RCW.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Missing children clearinghouse and hot line: Chapter 13.60 RCW.

Record of traffic charges of juveniles to be furnished juvenile court: RCW 46.20.293.

Relinquishment of permanent care of child: RCW 26.33.090.

Schools designated close security institutions: RCW 72.05.130.

Temporary assistance for needy families: Chapter 74.12 RCW.

Transfer from minimum security to close security institution—Court order required: RCW 72.05.130(3).

13.04.005 Short title. This chapter shall be known as the "basic juvenile court act". [1977 ex.s. c 291 § 1.]

Effective dates—1977 ex.s. c 291: "Section 57 of this 1977 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of state government and its existing public institutions, and shall take effect on July 1, 1977. The remainder of

this 1977 amendatory act shall take effect on July 1, 1978." [1977 ex.s. c 291 § 83.] Section 57 of 1977 ex.s. c 291 is codified as RCW 13.40.030.

Severability—1977 ex.s. c 291: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 291 § 82.]

13.04.011 Definitions. For purposes of this title:

(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, and the terms must be construed identically and used interchangeably;

(2) Except as specifically provided in RCW 13.40.020 and chapter 13.24 RCW, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

(3) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(4) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(5) "Parent" or "parents," except as used in chapter 13.34 RCW, means that parent or parents who have the right of legal custody of the child. "Parent" or "parents" as used in chapter 13.34 RCW, means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings;

(6) "Custodian" means that person who has the legal right to custody of the child. [1997 c 338 § 6; 1992 c 205 § 119; 1979 c 155 § 1; 1977 ex.s. c 291 § 2.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—1979 c 155: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1979]." [1979 c 155 § 89.]

Severability—1979 c 155: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 155 § 88.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.021 Juvenile court—How constituted—Cases tried without jury. (1) The juvenile court shall be a division of the superior court. In judicial districts having more than one judge of the superior court, the judges of such court shall annually assign one or more of their number to the juvenile court division. In any judicial district having a court commissioner, the court commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear all cases under this chapter and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050. In any judicial district having a family law commissioner appointed pursuant to chapter 26.12 RCW, the family law commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear cases under chapter 13.34 RCW or any other case under Title 13 RCW as provided in RCW 26.12.010, and to enter

judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050.

(2) Cases in the juvenile court shall be tried without a jury. [1994 sp.s. c 7 § 538; 1988 c 232 § 3; 1979 c 155 § 2; 1977 ex.s. c 291 § 3.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.030 Juvenile court—Exclusive original jurisdiction. (1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age: PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of

limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;

(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;

(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or

(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

In such a case the adult criminal court shall have exclusive original jurisdiction.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the diveree has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a

dismissal. [1997 c 386 § 17; 1997 c 341 § 3; 1997 c 338 § 7. Prior: 1995 c 312 § 39; 1995 c 311 § 15; 1994 sp.s. c 7 § 519; 1988 c 14 § 1; 1987 c 170 § 1; 1985 c 354 § 29; 1984 c 272 § 1; 1981 c 299 § 1; 1980 c 128 § 6; 1979 c 155 § 3; 1977 ex.s. c 291 § 4 1937 c 65 § 1; 1929 c 176 § 1; 1921 c 135 § 1; 1913 c 160 § 2; RRS § 1987-2.]

Reviser's note: This section was amended by 1997 c 338 § 7, 1997 c 341 § 3, and by 1997 c 386 § 17, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—1997 c 386: See note following RCW 74.14D.010.

Finding—Intent—1997 c 341: See note following RCW 13.04.0301.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Short title—1995 c 312: See note following RCW 13.32A.010

Application of 1994 sp.s. c 7 amendments: "Provisions governing exceptions to juvenile court jurisdiction in the amendments to RCW 13.04.030 contained in section 519, chapter 7, Laws of 1994 sp. sess. shall apply to serious violent and violent offenses committed on or after June 13, 1994. The criminal history which may result in loss of juvenile court jurisdiction upon the alleged commission of a serious violent or violent offense may have been acquired on, before, or after June 13, 1994." [1994 sp.s. c 7 § 540]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Savings—1988 c 14: "Any court validation of a voluntary consent to relinquishment or adoption of an Indian child which was obtained in a juvenile court or superior court pursuant to chapter 26.33 RCW after July 25, 1987, and before June 9, 1988, shall be valid and effective in all respects." [1988 c 14 § 2.]

Severability—1987 c 170: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 170 § 15.]

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

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

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

*Court commissioners: Chapter 2.24 RCW, state Constitution Art. 4 § 23.
Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 65)*

13.04.0301 Courts of limited jurisdiction—Concurrent jurisdiction with the juvenile court—Pilot project—Expiration. (1) Any county with a population of at least two hundred thousand but less than three hundred

fifty thousand that is located east of the crest of the Cascades may authorize a pilot project to allow courts of limited jurisdiction within the county to exercise concurrent jurisdiction with the juvenile court under certain circumstances. District and municipal courts of limited jurisdiction at the local option of the county or any city or town located within the county may exercise concurrent original jurisdiction with the juvenile court over traffic or civil infractions, violations of compulsory school attendance provisions under chapter 28A.225 RCW, and misdemeanors, when those offenses are allegedly committed by juveniles and:

(a)(i) The offense, if it were committed by an adult, would be punishable by sanctions that do not include incarceration; or

(ii) The offender's standard range disposition does not include a term of confinement as defined in RCW 13.40.020;

(b)(i) The court of limited jurisdiction has a computer system that is linked to the state-wide criminal history information data system used by juvenile courts to track and record juvenile offenders' criminal history; and

(ii) All information, including but not limited to filing charges, truancy petitions, and court dispositions, pertaining to offenses over which district and municipal courts of limited jurisdiction are exercising concurrent jurisdiction shall be transmitted without delay to juvenile court for entry into the appropriate court information system;

(c) The county legislative authority of the county has authorized creation of concurrent jurisdiction between the court of limited jurisdiction and the juvenile court; and

(d) The court of limited jurisdiction has an agreement with officials responsible for administering the county juvenile detention facility under RCW 13.04.035 and 13.20.060 that the court may order juveniles into the detention facility for an offense in cases in which the court finds that a disposition without confinement would be a manifest injustice.

(2) The juvenile court shall retain jurisdiction over the offense if the juvenile is charged with another offense arising out of the same incident and the juvenile court has jurisdiction over the other offense.

(3) Jurisdiction under this section does not constitute a decline or transfer of juvenile court jurisdiction under RCW 13.40.110.

(4) The procedural and disposition provisions of chapter 13.40 RCW apply to offenses prosecuted under this section.

(5) All diversions and adjudications entered by a court of limited jurisdiction must be included in an offender's criminal history as provided in chapter 13.40 RCW.

(6) This section is to be implemented as a pilot project in the county and the pilot project, together with the authority to exercise concurrent jurisdiction with the juvenile court, expires June 30, 2002. [1997 c 341 § 2.]

Finding—Intent—1997 c 341: "The legislature finds that a swift and certain response to a juvenile who begins engaging in acts of delinquency may prevent the offender from becoming a chronic or more serious offender. However, given pressing demands to address serious offenders, the system does not always respond to minor offenders expeditiously and effectively. Consequently, this act is adopted to implement an experiment to determine whether granting courts of limited jurisdiction concurrent jurisdiction over certain juvenile offenses will improve the system's effectiveness in curbing delinquency. The legislature may ascertain whether this approach might be successful on a larger scale by conducting an experiment with local governments, which are the laboratories of democracy." [1997 c 341 § 1.]

13.04.033 Appeal of court order—Procedure—Priority, when. (1) Any person aggrieved by a final order of the court may appeal the order as provided by this section. All appeals in matters other than those related to commission of a juvenile offense shall be taken in the same manner as in other civil cases. Except as otherwise provided in this title, all appeals in matters related to the commission of a juvenile offense shall be taken in the same manner as criminal cases and the right to collateral relief shall be the

same as in criminal cases. The order of the juvenile court shall stand pending the disposition of the appeal: PROVIDED, That the court or the appellate court may upon application stay the order.

(2) If the final order from which an appeal is taken grants the custody of the child to, or withholds it from, any of the parties, or if the child is committed as provided under this chapter, the appeal shall be given priority in hearing.

(3) In the absence of a specific direction from the party seeking review to file the notice, or the court-appointed guardian ad litem, the court may dismiss the review pursuant to RAP 18.9. To the extent that this enactment [1990 c 284] conflicts with the requirements of RAP 5.3(a) or RAP 5.3(b) this enactment [1990 c 284] shall supersede the conflicting rule. [1990 c 284 § 35; 1979 c 155 § 4; 1977 ex.s. c 291 § 5.]

Rules of court: Rules of Appellate Procedure.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.035 Administrator of juvenile court, probation counselor, and detention services—Appointment. Juvenile court shall be administered by the superior court, except that by local court rule and agreement with the legislative authority of the county this service may be administered by the legislative authority of the county. Juvenile probation counselor and detention services shall be administered by the superior court, except that (1) by local court rule and agreement with the county legislative authority, these services may be administered by the county legislative authority; (2) if a consortium of three or more counties, located east of the Cascade mountains and whose combined population exceeds five hundred thirty thousand, jointly operates a juvenile correctional facility, the county legislative authorities may prescribe for alternative administration of the juvenile correctional facility by ordinance; and (3) in any county with a population of one million or more, probation and detention services shall be administered in accordance with chapter 13.20 RCW. The administrative body shall appoint an administrator of juvenile court, probation counselor, and detention services who shall be responsible for day-to-day administration of such services, and who may also serve in the capacity of a probation counselor. One person may, pursuant to the agreement of more than one administrative body, serve as administrator of more than one juvenile court. [1996 c 284 § 1; 1991 c 363 § 10; 1979 c 155 § 5; 1977 ex.s. c 291 § 6.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Prosecuting attorney as party to juvenile court proceedings—Exception, procedure: RCW 13.40.090.

13.04.037 Administrator—Adoption of standards for detention facilities for juveniles—Revision and

inspection. The administrator shall after consultation with the state planning agency established under Title II of the federal juvenile justice and delinquency prevention act of 1974 (P.L. No. 93-415; 42 U.S.C. 5611 et seq.) following a public hearing, and after approval of the body responsible for administering the juvenile court, and no later than one hundred eighty days after the effective date of chapter 291, Laws of 1977 ex. sess., adopt standards for the regulation and government of detention facilities for juveniles. Such standards may be revised from time to time, according to the procedure outlined in this section. Each detention facility shall keep a copy of such standards available for inspection at all times. Such standards shall be reviewed and the detention facilities shall be inspected annually by the administrator. [1977 ex.s. c 291 § 7.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.040 Administrator—Appointment of probation counselors and persons in charge of detention facilities—Powers and duties, compensation—Collection of fines. The administrator 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 administrator. The probation counselor shall:

(1) Receive and examine referrals to the juvenile court for the purpose of considering the filing of a petition or information pursuant to chapter 13.32A or 13.34 RCW or RCW 13.40.070;

(2) Make recommendations to the court regarding the need for continued detention or shelter care of a child unless otherwise provided in this title;

(3) Arrange and supervise diversion agreements as provided in RCW 13.40.080, and ensure that the requirements of such agreements are met except as otherwise provided in this title;

(4) Prepare predisposition studies as required in RCW 13.34.120 and 13.40.130, and be present at the disposition hearing to respond to questions regarding the predisposition study: PROVIDED, That such duties shall be performed by the department for cases relating to dependency or to the termination of a parent and child relationship which is filed by the department unless otherwise ordered by the court; and

(5) Supervise court orders of disposition to ensure that all requirements of the order are met.

All probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests of juveniles under their supervision for the violation of any state law or county or city ordinance.

The administrator may, in any county or judicial district in the state, appoint one or more persons who shall have charge of detention rooms or houses of detention.

The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the legislative authority of the county, 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 legislative authorities of the counties affected, and such persons shall be paid as other county officers are paid.

The administrator is hereby authorized, and to the extent possible is encouraged to, contract with private agencies

existing within the community for the provision of services to youthful offenders and youth who have entered into diversion agreements pursuant to RCW 13.40.080.

The administrator shall establish procedures for the collection of fines assessed under RCW 13.40.080 (2)(d) and (13) and for the payment of the fines into the county general fund. [1995 c 312 § 40; 1983 c 191 § 14; 1979 c 155 § 6; 1977 ex.s. c 291 § 8; 1959 c 331 § 9; 1951 c 270 § 1; 1921 c 43 § 1; 1913 c 160 § 3; RRS § 1987-3.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.043 Administrator—Obtaining interpreters.

The administrator of juvenile court shall obtain interpreters as needed consistent with the intent and practice of chapter 2.43 RCW, to enable non-English speaking youth and their families to participate in detention, probation, or court proceedings and programs. [1993 c 415 § 6.]

Intent—1993 c 415: See note following RCW 2.56.031.

13.04.047 Administrator or staff—Health and dental examination and care—Consent.

(1) The administrator of the juvenile court or authorized staff may consent as provided in this section to the provision of health and dental examinations and care, and necessary treatment for medical and dental conditions requiring prompt attention, for juveniles lawfully detained at or sentenced to a detention facility. The treatment may include treatment provided at medical or dental facilities outside the juvenile detention facility and treatment provided within the juvenile detention facility for the period of time the youth is in the custody of the facility. Juveniles shall not be transported for treatment outside the facility if treatment services are available within the facility.

(2) The examination, care, and treatment may be provided without parental consent when prompt attention is required if the administrator of the juvenile court or authorized staff have been unable to secure permission for treatment from the parent or parents, guardian, or other person having custody of the child after reasonable attempts to do so before the provision of the medical and dental services.

(3) Treatment shall not be authorized for juveniles whose parent or parents, guardian, or other person having custody of the child informs the administrator of the juvenile court of objections to the treatment before the treatment is provided except where *RCW 69.54.060 applies. [1983 c 267 § 2.]

***Reviser's note:** RCW 69.54.060 was repealed by 1989 c 270 § 35.

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

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 ap-

pointing 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.]

13.04.093 Hearings—Duties of prosecuting attorney or attorney general. It shall be the duty of the prosecuting attorney to act in proceedings relating to the commission of a juvenile offense as provided in RCW 13.40.070 and 13.40.090 and in proceedings as provided in chapter 71.34 RCW. It shall be the duty of the prosecuting attorney to handle delinquency cases under chapter 13.24 RCW and it shall be the duty of the attorney general to handle dependency cases under chapter 13.24 RCW. It shall be the duty of the attorney general in contested cases brought by the department to present the evidence supporting any petition alleging dependency or seeking the termination of a parent and child relationship or any contested case filed under RCW 26.33.100 or approving or disapproving out-of-home placement: PROVIDED, That in each county with a population of less than two hundred ten thousand, the attorney general may contract with the prosecuting attorney of the county to perform the duties of the attorney general under this section. [1995 c 312 § 41; 1991 c 363 § 11; 1985 c 354 § 30; 1985 c 7 § 4; 1979 ex.s. c 165 § 6; 1977 ex.s. c 291 § 9.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.116 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement. (1) A juvenile shall not be confined in a jail or holding facility for adults, except:

(a) For a period not exceeding twenty-four hours excluding weekends and holidays and only for the purpose of an initial court appearance in a county where no juvenile detention facility is available, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates; or

(b) For not more than six hours and pursuant to a lawful detention in the course of an investigation, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates.

(2) For purposes of this section a juvenile is an individual under the chronological age of eighteen years who has not been transferred previously to adult courts.

(3) The department of social and health services shall monitor and enforce compliance with this section.

(4) This section shall not be construed to expand or limit the authority to lawfully detain juveniles. [1987 c 462 § 1; 1985 c 50 § 1.]

Effective dates—1987 c 462: "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. Sections 15 and 21 of this act shall take effect immediately. Sections 1 through 11 and

sections 16, 17, 22 and 23 of this act shall take effect January 1, 1988." [1987 c 462 § 24.] For codification of 1987 c 462, see Codification Tables, Volume 0.

Places of detention: Chapter 13.16 RCW.

Transfer of juvenile to department of corrections facility: RCW 13.40.280.

13.04.135 Establishment of house or room of detention. 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. [1983 c 98 § 2; 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 13.34.170, 13.16.085.

13.04.145 Educational program for juveniles in detention facilities. A program of education shall be provided for by the several counties and school districts of the state for common school age persons confined in each of the detention facilities staffed and maintained by the several counties of the state under this chapter and chapters 13.16 and 13.20 RCW. The division of duties, authority, and liabilities of the several counties and school districts of the state respecting the educational programs is the same in all respects as set forth in RCW 28A.190.030 through 28A.190.060 respecting programs of education for state residential school residents. For the purposes of this section, the terms "department of social and health services," "residential school" or "schools," and "superintendent or chief administrator of a residential school" as used in RCW 28A.190.030 through 28A.190.060 shall be respectively construed to mean "the several counties of the state," "detention facilities," and "the administrator of juvenile court detention services." Nothing in this section shall prohibit a school district from utilizing the services of an educational service district subject to RCW 28A.310.180. [1990 c 33 § 551; 1983 c 98 § 1.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Juvenile facilities, educational programs: RCW 28A.190.010.

13.04.155 Notification to school principal of conviction, adjudication, or diversion agreement—Provision of information to teachers and other personnel—Confidentiality. (1) Whenever a minor enrolled in any common school is convicted in adult criminal court, or adjudicated or entered into a diversion agreement with the juvenile court on any of the following offenses, the court must notify the principal of the student's school of the disposition of the case, after first notifying the parent or legal guardian that such notification will be made:

(a) A violent offense as defined in RCW 9.94A.030;

(b) A sex offense as defined in RCW 9.94A.030;

(c) Inhaling toxic fumes under chapter 9.47A RCW;

(d) A controlled substances violation under chapter 69.50 RCW;

(e) A liquor violation under RCW 66.44.270; and

(f) Any crime under chapters 9A.36, 9A.40, 9A.46, and 9A.48 RCW.

(2) The principal must provide the information received under subsection (1) of this section to every teacher of any student who qualifies under subsection (1) of this section and any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record. The principal must provide the information to teachers and other personnel based on any written records that the principal maintains or receives from a juvenile court administrator or a law enforcement agency regarding the student.

(3) Any information received by a principal or school personnel under this section is confidential and may not be further disseminated except as provided in RCW 28A.225.330, other statutes or case law, and the family and educational and privacy rights act of 1994, 20 U.S.C. Sec. 1232g et seq. [1997 c 266 § 7.]

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

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.]

13.04.180 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.]

13.04.240 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.]

13.04.300 Juvenile may be both dependent and an offender. Nothing in chapter 13.04, 13.06, 13.32A, 13.34, or 13.40 RCW may be construed to prevent a juvenile from being found both dependent and an offender if there exists a factual basis for such a finding. [1983 c 3 § 15; 1979 c 155 § 14.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.04.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders—Chapter 10.22 RCW does not apply to proceedings under chapter 13.40 RCW. The provisions of chapters 13.04 and 13.40 RCW, as now or hereafter amended, shall be the exclusive authority for the adjudication and disposition of juvenile offenders except where otherwise expressly provided. Chapter 10.22 RCW does not apply to juvenile offender proceedings, including diversion, under chapter 13.40 RCW. [1985 c 257 § 5; 1981 c 299 § 20.]

Severability—1985 c 257: See note following RCW 13.34.165.

Chapter 13.06

JUVENILE OFFENDERS—CONSOLIDATED JUVENILE SERVICES PROGRAMS

(Formerly: Probation services—Special supervision programs)

Sections

- 13.06.010 Intention.
- 13.06.020 State to share in cost.
- 13.06.030 Rules—Standards—"Consolidated juvenile services" defined.
- 13.06.040 Application by county or counties for state financial aid.
- 13.06.050 Conditions for receiving state funds—Criteria for distribution of funds—Annual report on programs to reduce racial disproportionality.
- 13.06.055 Housing authorities law—Group homes or halfway houses for released juveniles or developmentally disabled.

Juvenile may be both dependent and an offender: RCW 13.04.300.

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 require community planning, to provide necessary services and supervision for juvenile offenders in the community when appropriate, to reduce reliance on state-operated correctional institutions for offenders whose standard range disposition does not include commitment of the offender to the department, and to encourage the community to efficiently and effectively provide community services to juvenile offenders through consolidation of service delivery systems. [1983 c 191 § 1; 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 act [1969 ex.s. c 165] consists of the enactment of 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 social and health services, shall, in accordance with this chapter and applicable departmental rules, share in the cost of providing services to juveniles. [1983 c 191 § 2; 1979 c 141 § 13; 1969 ex.s. c 165 § 2.]

13.06.030 Rules—Standards—"Consolidated juvenile services" defined. The department of social and health services shall adopt rules prescribing minimum standards for the operation of consolidated juvenile services programs for juvenile offenders and such other rules as may be necessary for the administration of the provisions of this chapter. Consolidated juvenile services is a mechanism through which the department of social and health services supports local county comprehensive program plans in providing services to offender groups. Standards shall be sufficiently flexible to support current programs which have demonstrated effectiveness and efficiency, to foster development of innovative and improved services for juvenile offenders, to permit direct contracting with private vendors, and to encourage community support for and assistance to local programs. The secretary of social and health services shall seek advice from appropriate juvenile justice system participants in developing standards and procedures for the operation of consolidated juvenile services programs and the distribution of funds under this chapter. [1983 c 191 § 3; 1979 c 141 § 14; 1969 ex.s. c 165 § 3.]

13.06.040 Application by county or counties for state financial aid. Any county or group of counties may make application to the department of social and health services in the manner and form prescribed by the department for financial aid for the cost of consolidated juvenile services programs. Any such application must include a plan or plans for providing consolidated services to juvenile offenders in accordance with standards of the department. [1983 c 191 § 4; 1979 c 141 § 15; 1969 ex.s. c 165 § 4.]

13.06.050 Conditions for receiving state funds—Criteria for distribution of funds—Annual report on programs to reduce racial disproportionality. No county shall be entitled to receive any state funds provided by this chapter until its application and plan are 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 in this section. In addition, any county making application for state funds under this chapter that also operates a juvenile detention facility must have standards of operations in place that include: Intake and admissions, medical and health care, communication, correspondence, visiting and telephone use, security and control, sanitation and hygiene, juvenile rights, rules and discipline, property, juvenile records, safety and emergency procedures, programming, release and transfer, training and staff development, and food service.

(1) The distribution of funds to a county or a group of counties shall be based on criteria including but not limited to the county's per capita income, regional or county at-risk populations, juvenile crime or arrest rates, rates of poverty, size of racial minority populations, existing programs, and the effectiveness and efficiency of consolidating local programs towards reducing commitments to state correctional facilities for offenders whose standard range disposition does not include commitment of the offender to the department and reducing reliance on other traditional departmental services.

(2) The secretary will reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in meeting the terms and conditions of the approved plan and contract. Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs.

(3) The secretary, in conjunction with the human rights commission, shall evaluate the effectiveness of programs funded under this chapter in reducing racial disproportionality. The secretary shall investigate whether implementation of such programs has reduced disproportionality in counties with initially high levels of disproportionality. The analysis shall indicate which programs are cost-effective in reducing disproportionality in such areas as alternatives to detention, intake and risk assessment standards pursuant to RCW 13.40.038, alternatives to incarceration, and in the prosecution and adjudication of juveniles. The secretary shall report his or her findings to the legislature by December 1, 1994, and December 1 of each year thereafter. [1993 c 415 § 7; 1983 c 191 § 5; 1979 c 151 § 9; 1977 ex.s. c 307 § 1; 1973 1st ex.s. c 198 § 1; 1971 ex.s. c 165 § 1; 1969 ex.s. c 165 § 5.]

Intent—1993 c 415: See note following RCW 2.56.031.

Effective date—1977 ex.s. c 307: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 307 § 3.]

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.

Chapter 13.16

PLACES OF DETENTION

Sections

- 13.16.010 Establishment of house or room of detention.
- 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 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement.
- 13.16.100 Motion pictures.

Child

welfare agencies: Chapter 74.15 RCW.

welfare services: Chapter 74.13 RCW.

County juvenile detention facilities—Policy—Detention and risk assessment standards: RCW 13.40.038.

Employment of dental hygienist without supervision of a dentist authorized: RCW 18.29.056.

13.16.010 Establishment of house or room of detention. 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.]

Basic juvenile court act: Chapter 13.04 RCW.

13.16.090 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement. See RCW 13.04.116.

13.16.100 Motion pictures. Motion pictures unrated after November 1968 or rated R, X, or NC-17 by the motion picture association of America shall not be shown in juvenile detention facilities or facilities operated by the division of juvenile rehabilitation in the department of social and health services. [1994 sp.s. c 7 § 807.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Chapter 13.20

MANAGEMENT OF DETENTION FACILITIES—
COUNTIES WITH POPULATIONS OF ONE
MILLION OR MORE(Formerly: 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.
 13.20.060 Transfer of administration of juvenile court services to county executive—Authorized—Advisory board—Procedure.

Employment of dental hygienist without supervision of a dentist authorized:
 RCW 18.29.056.

Places of detention: Chapter 13.16 RCW.

Places of detention—Basic juvenile court act: Chapter 13.04 RCW.

13.20.010 Board of managers—Appointment authorized—Composition. The judges of the superior court of any county with a population of one million or more 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. [1991 c 363 § 12; 1955 c 232 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

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.]

13.20.060 Transfer of administration of juvenile court services to county executive—Authorized—Advisory board—Procedure. In addition, and alternatively, to the authority granted by RCW 13.20.010, the judges of the superior court of any county with a population of one million or more operating under a county charter providing for an elected county executive are hereby authorized, by a majority vote, subject to approval by ordinance of the legislative authority of the county to transfer to the county executive the responsibility for, and administration of all or part of juvenile court services, including detention, intake and probation. The superior court and county executive of such county are further authorized to establish a five-member juvenile court advisory board to advise the county in its administration of such services, facilities and programs. If the advisory board is established, two members of the advisory board shall be appointed by the superior court, two members shall be appointed by the county executive, and one member shall be selected by the vote of the other four members. The county is authorized to contract or otherwise make arrangements with other public or private agencies to provide all or a part of such services, facilities and programs. Subsequent to any transfer to the county of responsibility and administration of such services, facilities and programs pursuant to the foregoing authority, the judges of such superior court, by majority vote subject to the approval by ordinance of the legislative authority of the county, may retransfer the same to the superior court. [1991 c 363 § 13; 1975 1st ex.s. c 124 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

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.
13.24.035	Governor authorized and directed to execute supplementary compact—Contents.
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.]

13.24.035 Governor authorized and directed to execute supplementary compact—Contents. (1) The governor is hereby authorized and directed to execute a

compact amending and supplementing the interstate compact on juveniles on behalf of this state with any other state or states legally joining therein in the form substantially as set forth in subsection (2) of this section.

(2)(a) All provisions and procedures of Articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

(b) This amendment provides additional remedies and shall be binding only as among and between those party states which substantially execute the same. [1979 c 155 § 36.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.24.040 Financial arrangements. The compact administrator, subject to the approval of the office of financial management, 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. [1979 ex.s. c 86 § 1; 1955 c 284 § 4.]

Severability—1979 ex.s. c 86: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 86 § 9.] For codification of 1979 ex.s. c 86, see Codification Tables, Volume 0.

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.]

Chapter 13.32A

FAMILY RECONCILIATION ACT (Formerly: Procedures for families in conflict)

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- Consistency required in administration of statutes applicable to runaway youth, at-risk youth, and families in conflict: RCW 43.20A.770.*
- Family preservation services: Chapter 74.14C RCW.*
- Foster placement prevention: Chapter 74.14C RCW.*
- Implementation of chapters 13.32A and 13.34 RCW—Report to local governments: RCW 74.13.036.*
- Juvenile may be both dependent and an offender: RCW 13.04.300.*
- Services for families-in-conflict: RCW 74.14A.020.*
- Transitional treatment program for gang and drug-involved juvenile offenders: RCW 13.40.310.*

13.32A.010 Legislative findings and intent. The legislature finds that within any group of people there exists a need for guidelines for acceptable behavior and that, presumptively, the experience and maturity of parents make them better qualified to establish guidelines beneficial to and protective of their children. The legislature further finds that it is the right and responsibility of adults to establish laws for the benefit and protection of the society; and that, in the same manner, the right and responsibility for establishing reasonable guidelines for the family unit belongs to the adults within that unit. Further, absent abuse or neglect, parents should have the right to exercise control over their children. The legislature reaffirms its position stated in RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that it should remain intact in the absence of compelling evidence to the contrary.

The legislature recognizes there is a need for services and assistance for parents and children who are in conflict. These conflicts are manifested by children who exhibit various behaviors including: Running away, substance abuse, serious acting out problems, mental health needs, and other behaviors that endanger themselves or others.

The legislature finds many parents do not know their rights regarding their adolescent children and law enforcement. Parents and courts feel they have insufficient legal recourse for the chronic runaway child who is endangering himself or herself through his or her behavior. The legislature further recognizes that for chronic runaways whose behavior puts them in serious danger of harming themselves or others, secure facilities must be provided to allow opportunities for assessment, treatment, and to assist parents and protect their children. The legislature intends to give tools to parents, courts, and law enforcement to keep families together and reunite them whenever possible.

The legislature recognizes that some children run away to protect themselves from abuse or neglect in their homes. Abused and neglected children should be dealt with pursuant

to chapter 13.34 RCW and it is not the intent of the legislature to handle dependency matters under this chapter.

The legislature intends services offered under this chapter be on a voluntary basis whenever possible to children and their families and that the courts be used as a last resort.

The legislature intends to increase the safety of children through the preservation of families and the provision of assessment, treatment, and placement services for children in need of services and at-risk youth including services and assessments conducted under chapter 13.32A RCW and RCW 74.13.033. Within available funds, the legislature intends to provide these services through crisis residential centers in which children and youth may safely reside for a limited period of time. The time in residence shall be used to conduct an assessment of the needs of the children, youth, and their families. The assessments are necessary to identify appropriate services and placement options that will reduce the likelihood that children will place themselves in dangerous or life-threatening situations.

The legislature recognizes that crisis residential centers provide an opportunity for children to receive short-term necessary support and nurturing in cases where there may be abuse or neglect. The legislature intends that center staff provide an atmosphere of concern, care, and respect for children in the center and their parents.

The legislature intends to provide for the protection of children who, through their behavior, are endangering themselves. The legislature intends to provide appropriate residential services, including secure facilities, to protect, stabilize, and treat children with serious problems. The legislature further intends to empower parents by providing them with the assistance they require to raise their children. [1995 c 312 § 1; 1979 c 155 § 15.]

Short title—1995 c 312: "This act may be known and cited as the "Becca bill." [1995 c 312 § 2.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.020 Short title. This chapter shall be known and may be cited as the family reconciliation act. [1990 c 276 § 2; 1979 c 155 § 16.]

Intent—1990 c 276: "It is the intent of the legislature to:

- (1) Preserve, strengthen, and reconcile families experiencing problems with at-risk youth;
- (2) Provide a legal process by which parents who are experiencing problems with at-risk youth can request and receive assistance from juvenile courts in providing appropriate care, treatment, and supervision to such youth; and
- (3) Assess the effectiveness of the family reconciliation services program.

The legislature does not intend by this enactment to grant any parent the right to file an at-risk youth petition or receive juvenile court assistance in dealing with an at-risk youth. The purpose of this enactment is to create a process by which a parent of an at-risk youth may request and receive assistance subject to the availability of juvenile court services and resources. Recognizing that these services and resources are limited, the legislature intends that counties have the authority to impose reasonable limits on the utilization of juvenile court services and resources in matters related to at-risk youth. Any responsibilities imposed upon the department under this act shall be contingent upon the availability of funds specifically appropriated by the legislature for such purpose." [1990 c 276 § 1.]

Conflict with federal requirements—1990 c 276: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict

and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1990 c 276 § 19.]

Severability—1990 c 276: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 276 § 20.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.030 Definitions—Regulating leave from semi-secure facility. As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administrator" means the individual who has the daily administrative responsibility of a crisis residential center, or his or her designee.

(2) "At-risk youth" means a juvenile:

(a) Who is absent from home for at least seventy-two consecutive hours without consent of his or her parent;

(b) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person; or

(c) Who has a substance abuse problem for which there are no pending criminal charges related to the substance abuse.

(3) "Child," "juvenile," and "youth" mean any unemancipated individual who is under the chronological age of eighteen years.

(4) "Child in need of services" means a juvenile:

(a) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or other person;

(b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours from the parent's home, a crisis residential center, an out-of-home placement, or a court-ordered placement on two or more separate occasions; and

(i) Has exhibited a serious substance abuse problem; or

(ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person; or

(c)(i) Who is in need of necessary services, including food, shelter, health care, clothing, educational, or services designed to maintain or reunite the family;

(ii) Who lacks access, or has declined, to utilize these services; and

(iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure.

(5) "Child in need of services petition" means a petition filed in juvenile court by a parent, child, or the department seeking adjudication of placement of the child.

(6) "Crisis residential center" means a secure or semi-secure facility established pursuant to chapter 74.13 RCW.

(7) "Custodian" means the person or entity who has the legal right to the custody of the child.

(8) "Department" means the department of social and health services.

(9) "Extended family member" means an adult who is a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child.

(10) "Guardian" means that person or agency that (a) has been appointed as the guardian of a child in a legal proceeding other than a proceeding under chapter 13.34 RCW, and (b) has the right to legal custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW.

(11) "Multidisciplinary team" means a group formed to provide assistance and support to a child who is an at-risk youth or a child in need of services and his or her parent. The team shall include the parent, a department case worker, a local government representative when authorized by the local government, and when appropriate, members from the mental health and substance abuse disciplines. The team may also include, but is not limited to, the following persons: Educators, law enforcement personnel, probation officers, employers, church persons, tribal members, therapists, medical personnel, social service providers, placement providers, and extended family members. The team members shall be volunteers who do not receive compensation while acting in a capacity as a team member, unless the member's employer chooses to provide compensation or the member is a state employee.

(12) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(13) "Parent" means the parent or parents who have the legal right to custody of the child. "Parent" includes custodian or guardian.

(14) "Secure facility" means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff.

(15) "Semi-secure facility" means any facility, including but not limited to crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away. Pursuant to rules established by the department, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center.

(16) "Staff secure facility" means a structured group care facility licensed under rules adopted by the department with a ratio of at least one adult staff member to every two children.

(17) "Temporary out-of-home placement" means an out-of-home placement of not more than fourteen days ordered

by the court at a fact-finding hearing on a child in need of services petition. [1997 c 146 § 1; 1996 c 133 § 9; 1995 c 312 § 3; 1990 c 276 § 3; 1985 c 257 § 6; 1979 c 155 § 17.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.040 Family reconciliation services. Families who are in conflict or who are experiencing problems with at-risk youth or a child who may be in need of services may request family reconciliation services from the department. The department may involve a local multidisciplinary team in its response in determining the services to be provided and in providing those services. Such services shall be provided to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the child or family and to maintain families intact wherever possible. Family reconciliation services shall be designed to develop skills and supports within families to resolve problems related to at-risk youth, children in need of services, or family conflicts and may include but are not limited to referral to services for suicide prevention, psychiatric or other medical care, or psychological, mental health, drug or alcohol treatment, welfare, legal, educational, or other social services, as appropriate to the needs of the child and the family. Family reconciliation services may also include training in parenting, conflict management, and dispute resolution skills. [1995 c 312 § 5; 1994 c 304 § 3; 1990 c 276 § 4; 1981 c 298 § 1; 1979 c 155 § 18.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—1994 c 304: See note following RCW 28A.635.060.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 298 § 20.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011

13.32A.042 Multidisciplinary team—Formation—Authority. (1)(a) The administrator of a crisis residential center may convene a multidisciplinary team, which is to be locally based and administered, at the request of a child placed at the center or the child's parent.

(b) If the administrator has reasonable cause to believe that a child is a child in need of services and the parent is unavailable or unwilling to continue efforts to maintain the family structure, the administrator shall immediately convene a multidisciplinary team.

(c) A parent may disband a team twenty-four hours, excluding weekends and holidays, after receiving notice of formation of the team under (b) of this subsection unless a petition has been filed under RCW 13.32A.140. If a petition has been filed the parent may not disband the team until the hearing is held under RCW 13.32A.179. The court may allow the team to continue if an out-of-home placement is

ordered under RCW 13.32A.179(3). Upon the filing of an at-risk youth or dependency petition the team shall cease to exist, unless the parent requests continuation of the team or unless the out-of-home placement was ordered under RCW 13.32A.179(3).

(2) The secretary shall request participation of appropriate state agencies to assist in the coordination and delivery of services through the multidisciplinary teams. Those agencies that agree to participate shall provide the secretary all information necessary to facilitate forming a multidisciplinary team and the secretary shall provide this information to the administrator of each crisis residential center.

(3) The secretary shall designate within each region a department employee who shall have responsibility for coordination of the state response to a request for creation of a multidisciplinary team. The secretary shall advise the administrator of each crisis residential center of the name of the appropriate employee. Upon a request of the administrator to form a multidisciplinary team the employee shall provide a list of the agencies that have agreed to participate in the multidisciplinary team.

(4) The administrator shall also seek participation from representatives of mental health and drug and alcohol treatment providers as appropriate.

(5) A parent shall be advised of the request to form a multidisciplinary team and may select additional members of the multidisciplinary team. The parent or child may request any person or persons to participate including, but not limited to, educators, law enforcement personnel, court personnel, family therapists, licensed health care practitioners, social service providers, youth residential placement providers, other family members, church representatives, and members of their own community. The administrator shall assist in obtaining the prompt participation of persons requested by the parent or child.

(6) When an administrator of a crisis residential center requests the formation of a team, the state agencies must respond as soon as possible. The team shall have the authority to evaluate the juvenile, and family members, if appropriate and agreed to by the parent, and shall:

(a) With parental input, develop a plan of appropriate available services and assist the family in obtaining those services;

(b) Make a referral to the designated chemical dependency specialist or the county designated mental health professional, if appropriate;

(c) Recommend no further intervention because the juvenile and his or her family have resolved the problem causing the family conflict; or

(d) With the parent's consent, work with them to achieve reconciliation of the child and family. [1995 c 312 § 13.]

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.044 Multidisciplinary team—Purpose. (1) The purpose of the multidisciplinary team is to assist in a coordinated referral of the family to available social and health-related services.

(2) At the first meeting of the multidisciplinary team, it shall choose a member to coordinate the team's efforts. The

parent member of the multidisciplinary team must agree with the choice of coordinator. The team shall meet or communicate as often as necessary to assist the family.

(3) The coordinator of the multidisciplinary team may assist in filing a child in need of services petition when requested by the parent or child or an at-risk youth petition when requested by the parent. The multidisciplinary team shall have no standing as a party in any action under this title.

(4) If the administrator is unable to contact the child's parent, the multidisciplinary team may be used for assistance. If the parent has not been contacted within five days the administrator shall contact the department and request the case be reviewed for a dependency filing under chapter 13.34 RCW. [1995 c 312 § 14.]

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.050 Officer taking child into custody—When authorized—Maximum time of custody—Transporting to crisis residential center—Report on suspected abuse or neglect. (1) A law enforcement officer shall take a child into custody:

(a) If a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent; or

(b) If a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety or that a child is violating a local curfew ordinance; or

(c) If an agency legally charged with the supervision of a child has notified a law enforcement agency that the child has run away from placement; or

(d) If a law enforcement agency has been notified by the juvenile court that the court finds probable cause exists to believe that the child has violated a court placement order issued pursuant to chapter 13.32A or 13.34 RCW or that the court has issued an order for law enforcement pick-up of the child under this chapter or chapter 13.34 RCW.

(2) Law enforcement custody shall not extend beyond the amount of time reasonably necessary to transport the child to a destination authorized by law and to place the child at that destination. Law enforcement custody continues until the law enforcement officer transfers custody to a person, agency, or other authorized entity under this chapter, or releases the child because no placement is available. Transfer of custody is not complete unless the person, agency, or entity to whom the child is released agrees to accept custody.

(3) If a law enforcement officer takes a child into custody pursuant to either subsection (1)(a) or (b) of this section and transports the child to a crisis residential center, the officer shall, within twenty-four hours of delivering the child to the center, provide to the center a written report detailing the reasons the officer took the child into custody. The center shall provide the department with a copy of the officer's report.

(4) If the law enforcement officer who initially takes the juvenile into custody or the staff of the crisis residential center have reasonable cause to believe that the child is

absent from home because he or she is abused or neglected, a report shall be made immediately to the department.

(5) Nothing in this section affects the authority of any political subdivision to make regulations concerning the conduct of minors in public places by ordinance or other local law.

(6) If a law enforcement officer receives a report that causes the officer to have reasonable suspicion that a child is being harbored under RCW 13.32A.080 or for other reasons has a reasonable suspicion that a child is being harbored under RCW 13.32A.080, the officer shall remove the child from the custody of the person harboring the child and shall transport the child to one of the locations specified in RCW 13.32A.060.

(7) No child may be placed in a secure facility except as provided in this chapter. [1997 c 146 § 2; 1996 c 133 § 10; 1995 c 312 § 6; 1994 sp.s. c 7 § 505; 1990 c 276 § 5; 1986 c 288 § 1; 1985 c 257 § 7; 1981 c 298 § 2; 1979 c 155 § 19.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1986 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 288 § 13.]

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.060 Officer taking child into custody—Procedure—Transporting to home, crisis residential center, custody of department, or juvenile detention facility. (1) An officer taking a child into custody under RCW 13.32A.050(1) (a) or (b) shall inform the child of the reason for such custody and shall:

(a) Transport the child to his or her home or to a parent at his or her place of employment, if no parent is at home. The parent may request that the officer take the child to the home of an adult extended family member, responsible adult, crisis residential center, the department, or a licensed youth shelter. In responding to the request of the parent, the officer shall take the child to a requested place which, in the officer's belief, is within a reasonable distance of the parent's home. The officer releasing a child into the custody of a parent, an adult extended family member, responsible adult, or a licensed youth shelter shall inform the person receiving the child of the reason for taking the child into custody and inform all parties of the nature and location of appropriate services available in the community; or

(b) After attempting to notify the parent, take the child to a designated crisis residential center's secure facility or a center's semi-secure facility if a secure facility is full, not available, or not located within a reasonable distance:

(i) If the child expresses fear or distress at the prospect of being returned to his or her home which leads the officer to believe there is a possibility that the child is experiencing

some type of child abuse or neglect, as defined in RCW 26.44.020;

(ii) If it is not practical to transport the child to his or her home or place of the parent's employment; or

(iii) If there is no parent available to accept custody of the child; or

(c) After attempting to notify the parent, if a crisis residential center is full, not available, or not located within a reasonable distance, the officer may request the department to accept custody of the child. If the department determines that an appropriate placement is currently available, the department shall accept custody and place the child in an out-of-home placement. Upon accepting custody of a child from the officer, the department may place the child in an out-of-home placement for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, without filing a child in need of services petition under this chapter, obtaining parental consent, or obtaining an order for placement under chapter 13.34 RCW. Upon transferring a child to the department's custody, the officer shall provide written documentation of the reasons and the statutory basis for taking the child into custody. If the department declines to accept custody of the child, the officer may release the child after attempting to take the child to the following, in the order listed: The home of an adult extended family member; a responsible adult; a licensed youth shelter and shall immediately notify the department if no placement option is available and the child is released.

(2) An officer taking a child into custody under RCW 13.32A.050(1) (c) or (d) shall inform the child of the reason for custody. An officer taking a child into custody under RCW 13.32A.050(1)(c) may release the child to the supervising agency, or shall take the child to a designated crisis residential center's secure facility. If the secure facility is not available, not located within a reasonable distance, or full, the officer shall take the child to a semi-secure crisis residential center. An officer taking a child into custody under RCW 13.32A.050(1)(d) may place the child in a juvenile detention facility as provided in RCW 13.32A.065 or a secure facility, except that the child shall be taken to detention whenever the officer has been notified that a juvenile court has entered a detention order under this chapter or chapter 13.34 RCW.

(3) Whenever an officer transfers custody of a child to a crisis residential center or the department, the child may reside in the crisis residential center or may be placed by the department in an out-of-home placement for an aggregate total period of time not to exceed seventy-two hours excluding Saturdays, Sundays, and holidays. Thereafter, the child may continue in out-of-home placement only if the parents have consented, a child in need of services petition has been filed under this chapter, or an order for placement has been entered under chapter 13.34 RCW.

(4) The department shall ensure that all law enforcement authorities are informed on a regular basis as to the location of all designated secure and semi-secure facilities within centers in their jurisdiction, where children taken into custody under RCW 13.32A.050 may be taken. [1997 c 146 § 3; 1996 c 133 § 11; 1995 c 312 § 7; 1994 sp.s. c 7 § 506; 1985 c 257 § 8; 1981 c 298 § 3; 1979 c 155 § 20.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.065 Officer taking child into custody—Placing in detention—Detention review hearing—Hearing on contempt. (1) A child may be placed in detention after being taken into custody pursuant to RCW 13.32A.050(1)(d). The court shall hold a detention review hearing within twenty-four hours, excluding Saturdays, Sundays, and holidays. The court shall release the child after twenty-four hours, excluding Saturdays, Sundays, and holidays, unless:

(a) A motion and order to show why the child should not be held in contempt has been filed and served on the child at or before the detention hearing; and

(b) The court believes that the child would not appear at a hearing on contempt.

(2) If the court orders the child to remain in detention, the court shall set the matter for a hearing on contempt within seventy-two hours, excluding Saturdays, Sundays, and holidays. [1996 c 133 § 12; 1981 c 298 § 4.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Severability—1981 c 298: See note following RCW 13.32A.040.

13.32A.070 Immunity from liability for law enforcement officer and person with whom child is placed. (1) A law enforcement officer acting in good faith pursuant to this chapter is immune from civil or criminal liability for such action.

(2) A person with whom a child is placed pursuant to this chapter and who acts reasonably and in good faith is immune from civil or criminal liability for the act of receiving the child. The immunity does not release the person from liability under any other law. [1996 c 133 § 13; 1995 c 312 § 8; 1986 c 288 § 2; 1981 c 298 § 5; 1979 c 155 § 21.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Severability—1986 c 288: See note following RCW 13.32A.050.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.080 Unlawful harboring of a minor—Penalty—Defense—Prosecution of adult for involving child in commission of offense. (1)(a) A person commits the crime of unlawful harboring of a minor if the person provides shelter to a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent's permission, and if the person intentionally:

(i) Fails to release the minor to a law enforcement officer after being requested to do so by the officer; or

(ii) Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the officer, if the person knows the location of the minor and

had either taken the minor to that location or had assisted the minor in reaching that location; or

(iii) Obstructs a law enforcement officer from taking the minor into custody; or

(iv) Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer.

(b) It is a defense to a prosecution under this section that the defendant had custody of the minor pursuant to a court order.

(2) Harboring a minor is punishable as a gross misdemeanor.

(3) Any person who provides shelter to a child, absent from home, may notify the department's local community service office of the child's presence.

(4) An adult responsible for involving a child in the commission of an offense may be prosecuted under existing criminal statutes including, but not limited to:

(a) Distribution of a controlled substance to a minor, as defined in RCW 69.50.406;

(b) Promoting prostitution as defined in chapter 9A.88 RCW; and

(c) Complicity of the adult in the crime of a minor, under RCW 9A.08.020. [1994 sp.s. c 7 § 507; 1981 c 298 § 6; 1979 c 155 § 22.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.082 Providing shelter to minor—Requirement to notify parent, law enforcement, or department. (1) Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home, or other lawfully prescribed residence, without the permission of the parent, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department. The report may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from home without parental permission.

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family. [1996 c 133 § 14; 1995 c 312 § 34.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.084 Providing shelter to minor—Immunity from liability. If a person provides the notice required in RCW 13.32A.082, he or she is immune from liability for

any cause of action arising from providing shelter to the child. The immunity shall not extend to acts of intentional misconduct or gross negligence by the person providing the shelter. [1995 c 312 § 36.]

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.086 Duty of law enforcement agencies to identify runaway children under RCW 43.43.510.

Whenever a law enforcement agency receives a report from a parent that his or her child, or child over whom the parent has custody, has without permission of the parent left the home or residence lawfully prescribed for the child under circumstances where the parent believes that the child has run away from the home or the residence, the agency shall provide for placing information identifying the child in files under RCW 43.43.510. [1995 c 312 § 37.]

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.090 Duty to inform parents—Transportation to child's home or out-of-home placement—Notice to department. (1) The administrator of a designated crisis residential center or the department shall perform the duties under subsection (2) of this section:

(a) Upon admitting a child who has been brought to the center by a law enforcement officer under RCW 13.32A.060;

(b) Upon admitting a child who has run away from home or has requested admittance to the center;

(c) Upon learning from a person under RCW 13.32A.080(3) that the person is providing shelter to a child absent from home; or

(d) Upon learning that a child has been placed with a responsible adult pursuant to RCW 13.32A.060.

(2) When any of the circumstances under subsection (1) of this section are present, the administrator of a center or the department shall perform the following duties:

(a) Immediately notify the child's parent of the child's whereabouts, physical and emotional condition, and the circumstances surrounding his or her placement;

(b) Initially notify the parent that it is the paramount concern of the family reconciliation service personnel to achieve a reconciliation between the parent and child to reunify the family and inform the parent as to the procedures to be followed under this chapter;

(c) Inform the parent whether a referral to children's protective services has been made and, if so, inform the parent of the standard pursuant to RCW 26.44.020(12) governing child abuse and neglect in this state;

(d) Arrange transportation for the child to the residence of the parent, as soon as practicable, at the latter's expense to the extent of his or her ability to pay, with any unmet transportation expenses to be assumed by the department, when the child and his or her parent agrees to the child's return home or when the parent produces a copy of a court order entered under this chapter requiring the child to reside in the parent's home;

(e) Arrange transportation for the child to: (i) An out-of-home placement which may include a licensed group care facility or foster family when agreed to by the child and parent; or (ii) a certified or licensed mental health or chemical dependency program of the parent's choice; at the parent's expense to the extent of his or her ability to pay,

with any unmet transportation expenses assumed by the department.

(3) If the administrator of the crisis residential center performs the duties listed in subsection (2) of this section, he or she shall also notify the department that a child has been admitted to the crisis residential center. [1996 c 133 § 7; 1995 c 312 § 10; 1990 c 276 § 6; 1981 c 298 § 7; 1979 c 155 § 23.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.095 Unauthorized leave from crisis residential center—Notice to parents and law enforcement. The administrator of the crisis residential center shall notify parents and the appropriate law enforcement agency immediately as to any unauthorized leave from the center by a child placed at the center. [1996 c 133 § 15; 1995 c 312 § 21.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.100 Family reconciliation services for child in out-of-home placement. Where a child is placed in an out-of-home placement pursuant to RCW 13.32A.090(2)(e), the department shall make available family reconciliation services in order to facilitate the reunification of the family. Any such placement may continue as long as there is agreement by the child and parent. [1996 c 133 § 16; 1981 c 298 § 8; 1979 c 155 § 24.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.110 Interstate compact to apply, when. If a child who has a legal residence outside the state of Washington is admitted to a crisis residential center or is released by a law enforcement officer to the department, and the child refuses to return home, the provisions of RCW 13.24.010 shall apply. [1996 c 133 § 17; 1979 c 155 § 25.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Interstate compact on juveniles: Chapter 13.24 RCW.

13.32A.120 Out-of-home placement—Agreement to continue—Petition to approve. (1) Where either a child or the child's parent or the person or facility currently providing shelter to the child notifies the center that such individual or individuals cannot agree to the continuation of an out-of-home placement arrived at pursuant to RCW 13.32A.090(2)(e), the administrator of the center shall immediately contact the remaining party or parties to the agreement and shall attempt to bring about the child's return

home or to an alternative living arrangement agreeable to the child and the parent as soon as practicable.

(2) If a child and his or her parent cannot agree to an out-of-home placement under RCW 13.32A.090(2)(e), either the child or parent may file with the juvenile court a child in need of services petition to approve an out-of-home placement or the parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth under this chapter.

(3) If a child and his or her parent cannot agree to the continuation of an out-of-home placement arrived at under RCW 13.32A.090(2)(e), either the child or parent may file with the juvenile court a child in need of services petition to approve an out-of-home placement or the parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth under this chapter. [1996 c 133 § 18; 1995 c 312 § 11; 1990 c 276 § 7; 1979 c 155 § 26.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.125 Temporary out-of-home placement in semi-secure crisis residential center. In approving a petition under this chapter, a child may be placed in a semi-secure crisis residential center as a temporary out-of-home placement under the following conditions: (1) No other suitable out-of-home placement is available; (2) space is available in the semi-secure crisis residential center; and (3) no child will be denied access for a five-day placement due to this placement.

Any child referred to a semi-secure crisis residential center by a law enforcement officer, the department, or himself or herself shall have priority over a temporary out-of-home placement in the facility. Any out-of-home placement order shall be subject to this priority, and the administrator of the semi-secure crisis residential center shall transfer the temporary out-of-home placement youth to a new out-of-home placement as necessary to ensure access for youth needing the semi-secure crisis residential center. [1995 c 312 § 44.]

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.130 Child admitted to secure facility in crisis residential center—Maximum hours of custody—Evaluation for semi-secure facility or release to department—Parental right to remove child—Reconciliation effort—Information to parent and child—Written statement of services and rights—Crisis residential center immunity from liability. (1) A child admitted to a secure facility within a crisis residential center shall remain in the facility for not more than five consecutive days, but for at least twenty-four hours after admission. If the child admitted under this section is transferred between centers or between secure and semi-secure facilities, the aggregate length of time spent in all such centers or facilities may not exceed five consecutive days.

(2)(a)(i) The facility administrator shall determine within twenty-four hours after a child's admission to a secure facility whether the child is likely to remain in a semi-secure facility and may transfer the child to a semi-secure facility or release the child to the department. The determination shall be based on: (A) The need for continued assessment, protection, and treatment of the child in a secure facility; and (B) the likelihood the child would remain at a semi-secure facility until his or her parents can take the child home or a petition can be filed under this title.

(ii) In making the determination the administrator shall consider the following information if known: (A) The child's age and maturity; (B) the child's condition upon arrival at the center; (C) the circumstances that led to the child's being taken to the center; (D) whether the child's behavior endangers the health, safety, or welfare of the child or any other person; (E) the child's history of running away which has endangered the health, safety, and welfare of the child; and (F) the child's willingness to cooperate in the assessment.

(b) If the administrator of a secure facility determines the child is unlikely to remain in a semi-secure facility, the administrator shall keep the child in the secure facility pursuant to this chapter and in order to provide for space for the child may transfer another child who has been in the facility for at least seventy-two hours to a semi-secure facility. The administrator shall only make a transfer of a child after determining that the child who may be transferred is likely to remain at the semi-secure facility.

(c) A crisis residential center administrator is authorized to transfer a child to a crisis residential center in the area where the child's parents reside or where the child's lawfully prescribed residence is located.

(d) An administrator may transfer a child from a semi-secure facility to a secure facility whenever he or she reasonably believes that the child is likely to leave the semi-secure facility and not return and after full consideration of all factors in (a)(i) and (ii) of this subsection.

(3) If no parent is available or willing to remove the child during the first seventy-two hours following admission, the department shall consider the filing of a petition under RCW 13.32A.140.

(4) Notwithstanding the provisions of subsection (1) of this section, the parents may remove the child at any time during the five-day period unless the staff of the crisis residential center has reasonable cause to believe that the child is absent from the home because he or she is abused or neglected or if allegations of abuse or neglect have been made against the parents. The department or any agency legally charged with the supervision of a child may remove a child from a crisis residential center at any time after the first twenty-four-hour period after admission has elapsed and only after full consideration by all parties of the factors in subsection (2)(a) of this section.

(5) Crisis residential center staff shall make reasonable efforts to protect the child and achieve a reconciliation of the family. If a reconciliation and voluntary return of the child has not been achieved within forty-eight hours from the time of intake, and if the administrator of the center does not consider it likely that reconciliation will be achieved within the five-day period, then the administrator shall inform the parent and child of: (a) The availability of counseling

services; (b) the right to file a child in need of services petition for an out-of-home placement, the right of a parent to file an at-risk youth petition, and the right of the parent and child to obtain assistance in filing the petition; (c) the right to request the facility administrator or his or her designee to form a multidisciplinary team; (d) the right to request a review of any out-of-home placement; (e) the right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and (f) the right to request treatment in a program to address the child's at-risk behavior under RCW 13.32A.197.

(6) At no time shall information regarding a parent's or child's rights be withheld. The department shall develop and distribute to all law enforcement agencies and to each crisis residential center administrator a written statement delineating the services and rights. Every officer taking a child into custody shall provide the child and his or her parent(s) or responsible adult with whom the child is placed with a copy of the statement. In addition, the administrator of the facility or his or her designee shall provide every resident and parent with a copy of the statement.

(7) A crisis residential center and its administrator or his or her designee acting in good faith in carrying out the provisions of this section are immune from criminal or civil liability for such actions. [1997 c 146 § 4; 1996 c 133 § 8; 1995 c 312 § 12; 1994 sp.s. c 7 § 508; 1992 c 205 § 206; 1990 c 276 § 8; 1985 c 257 § 9; 1981 c 298 § 9; 1979 c 155 § 27.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.140 Out-of-home placement—Child in need of services petition by department—Procedure. Unless the department files a dependency petition, the department shall file a child in need of services petition to approve an out-of-home placement on behalf of a child under any of the following sets of circumstances:

(1) The child has been admitted to a crisis residential center or has been placed by the department in an out-of-home placement, and:

(a) The parent has been notified that the child was so admitted or placed;

(b) The child cannot return home, and legal authorization is needed for out-of-home placement beyond seventy-two hours;

(c) No agreement between the parent and the child as to where the child shall live has been reached;

(d) No child in need of services petition has been filed by either the child or parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

(2) The child has been admitted to a crisis residential center and:

(a) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such placement;

(b) The staff, after searching with due diligence, have been unable to contact the parent of such child; and

(c) The child has no suitable place to live other than the home of his or her parent.

(3) An agreement between parent and child made pursuant to RCW 13.32A.090(2)(e) or pursuant to RCW 13.32A.120(1) is no longer acceptable to parent or child, and:

(a) The party to whom the arrangement is no longer acceptable has so notified the department;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No new agreement between parent and child as to where the child shall live has been reached;

(d) No child in need of services petition has been filed by either the child or the parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

Under the circumstances of subsections (1), (2), or (3) of this section, the child shall remain in an out-of-home placement until a child in need of services petition filed by the department on behalf of the child is reviewed by the juvenile court and is resolved by the court. The department may authorize emergency medical or dental care for a child admitted to a crisis residential center or placed in an out-of-home placement by the department. The state, when the department files a child in need of services petition under this section, shall be represented as provided for in RCW 13.04.093. [1997 c 146 § 5; 1996 c 133 § 19; 1995 c 312 § 15; 1990 c 276 § 9; 1981 c 298 § 10; 1979 c 155 § 28.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.150 Out-of-home placement—Child in need of services petition by child or parent. (1) Except as otherwise provided in this chapter, the juvenile court shall not accept the filing of a child in need of services petition by the child or the parents or the filing of an at-risk youth petition by the parent, unless verification is provided that a family assessment has been completed by the department. The family assessment provided by the department shall involve the multidisciplinary team as provided in RCW 13.32A.040, if one exists. The family assessment or plan of services developed by the multidisciplinary team shall be aimed at family reconciliation, reunification, and avoidance of the out-of-home placement of the child. If the department

is unable to complete an assessment within two working days following a request for assessment the child or the parents may proceed under subsection (2) of this section or the parent may proceed under RCW 13.32A.191.

(2) A child or a child's parent may file with the juvenile court a child in need of services petition to approve an out-of-home placement for the child. The department shall, when requested, assist either a parent or child in the filing of the petition. The petition must be filed in the county where the parent resides. The petition shall allege that the child is a child in need of services and shall ask only that the placement of a child outside the home of his or her parent be approved. The filing of a petition to approve the placement is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent, and confers upon the court a special jurisdiction to approve or disapprove an out-of-home placement.

(3) A petition may not be filed if the child is the subject of a proceeding under chapter 13.34 RCW. [1996 c 133 § 20; 1995 c 312 § 16; 1992 c 205 § 208; 1990 c 276 § 10; 1989 c 269 § 1; 1981 c 298 § 11; 1979 c 155 § 29.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.152 Child in need of services petition—Service on parents—Notice to department. (1) Whenever a child in need of services petition is filed by a youth pursuant to RCW 13.32A.150, or the department pursuant to RCW 13.32A.140, the filing party shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed. [1996 c 133 § 21; 1995 c 312 § 4.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.160 Out-of-home placement—Court action upon filing of child in need of services petition—Child placement. (1) When a proper child in need of services petition to approve an out-of-home placement is filed under RCW 13.32A.120, 13.32A.140, or 13.32A.150 the juvenile court shall: (a)(i) Schedule a fact-finding hearing to be held: (A) For a child who resides in a place other than his or her parent's home and other than an out-of-home placement, within five calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the preceding judicial day; or (B) for a child living at home or in an out-of-home placement, within ten days; and (ii) notify the parent, child, and the department of such date; (b) notify the parent of the right to be represented

by counsel and, if indigent, to have counsel appointed for him or her by the court; (c) appoint legal counsel for the child; (d) inform the child and his or her parent of the legal consequences of the court approving or disapproving a child in need of services petition; (e) notify the parents of their rights under this chapter and chapters 11.88, 13.34, 70.96A, and 71.34 RCW, including the right to file an at-risk youth petition, the right to submit an application for admission of their child to a treatment facility for alcohol, chemical dependency, or mental health treatment, and the right to file a guardianship petition; and (f) notify all parties, including the department, of their right to present evidence at the fact-finding hearing.

(2) Upon filing of a child in need of services petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility licensed under chapter 74.15 RCW, or any other suitable residence to be determined by the department. The court may place a child in a crisis residential center for a temporary out-of-home placement as long as the requirements of RCW 13.32A.125 are met.

(3) If the child has been placed in a foster family home or group care facility under chapter 74.15 RCW, the child shall remain there, or in any other suitable residence as determined by the department, pending resolution of the petition by the court. Any placement may be reviewed by the court within three judicial days upon the request of the juvenile or the juvenile's parent. [1997 c 146 § 6; 1996 c 133 § 22; 1995 c 312 § 17; 1990 c 276 § 11; 1989 c 269 § 2; 1979 c 155 § 30.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.170 Out-of-home placement—Fact-finding hearing.

(1) The court shall hold a fact-finding hearing to consider a proper child in need of services petition, giving due weight to the intent of the legislature that families have the right to place reasonable restrictions and rules upon their children, appropriate to the individual child's developmental level. The court may appoint legal counsel and/or a guardian ad litem to represent the child and advise parents of their right to be represented by legal counsel. At the commencement of the hearing, the court shall advise the parents of their rights as set forth in RCW 13.32A.160(1). If the court approves or denies a child in need of services petition, a written statement of the reasons must be filed.

(2) The court may approve an order stating that the child shall be placed in a residence other than the home of his or her parent only if it is established by a preponderance of the evidence, including a departmental recommendation for approval or dismissal of the petition, that:

(a) The child is a child in need of services as defined in RCW 13.32A.030(4);

(b) If the petitioner is a child, he or she has made a reasonable effort to resolve the conflict;

(c) Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's

home and to make it possible for the child to return home; and

(d) A suitable out-of-home placement resource is available.

The court may not grant a petition filed by the child or the department if it is established that the petition is based only upon a dislike of reasonable rules or reasonable discipline established by the parent. The court may not grant the petition if the child is the subject of a proceeding under chapter 13.34 RCW.

(3) Following the fact-finding hearing the court shall:

(a) Approve a child in need of services petition and, if appropriate, enter a temporary out-of-home placement for a period not to exceed fourteen days pending approval of a disposition decision to be made under RCW 13.32A.179(2); (b) approve an at-risk youth petition filed by the parents and dismiss the child in need of services petition; (c) dismiss the petition; or (d) order the department to review the case to determine whether the case is appropriate for a dependency petition under chapter 13.34 RCW. [1996 c 133 § 23; 1995 c 312 § 18; 1989 c 269 § 3; 1987 c 524 § 1; 1985 c 257 § 10; 1984 c 188 § 1; 1981 c 298 § 12; 1979 c 155 § 31.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.175 Out-of-home placement—Contribution to child's support—Enforcement of order.

In any proceeding in which the court approves an out-of-home placement, the court shall inquire into the ability of parents to contribute to the child's support. If the court finds that the parents are able to contribute to the support of the child, the court shall order them to make such support payments as the court deems equitable. The court may enforce such an order by execution or in any way in which a court of equity may enforce its orders. However, payments shall not be required of a parent who has both opposed the placement and continuously sought reconciliation with, and the return of, the child. All orders entered in a proceeding approving out-of-home placement shall be in compliance with the provisions of RCW 26.23.050. [1995 c 312 § 19; 1987 c 435 § 13; 1981 c 298 § 15.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1981 c 298: See note following RCW 13.32A.040.

13.32A.177 Out-of-home placement—Determination of support payments.

A determination of support payments ordered under RCW 13.32A.175 shall be based upon chapter 26.19 RCW. [1995 c 312 § 22; 1988 c 275 § 14.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

13.32A.179 Out-of-home placement—Disposition hearing—Court order—Dispositional plan—Child subject to contempt proceedings—Dismissal of order at request

of department or parent. (1) A disposition hearing shall be held no later than fourteen days after the approval of the temporary out-of-home placement. The parents, child, and department shall be notified by the court of the time and place of the hearing.

(2) At the conclusion of the disposition hearing, the court may: (a) Reunite the family and dismiss the petition; (b) approve an at-risk youth petition filed by the parents and dismiss the child in need of services petition; (c) approve an out-of-home placement requested in the child in need of services petition by the parents; (d) order an out-of-home placement at the request of the child or the department not to exceed ninety days; or (e) order the department to review the matter for purposes of filing a dependency petition under chapter 13.34 RCW. Whether or not the court approves or orders an out-of-home placement, the court may also order any conditions of supervision as set forth in RCW 13.32A.196(2).

(3) The court may only enter an order under subsection (2)(d) of this section if it finds by clear, cogent, and convincing evidence that: (a)(i) The order is in the best interest of the family; (ii) the parents have not requested an out-of-home placement; (iii) the parents have not exercised any other right listed in RCW 13.32A.160(i)(e); (iv) the child has made reasonable efforts to resolve the problems that led to the filing of the petition; (v) the problems cannot be resolved by delivery of services to the family during continued placement of the child in the parental home; (vi) reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and (vii) a suitable out-of-home placement resource is available; (b)(i) the order is in the best interest of the child; and (ii) the parents are unavailable; or (c) the parent's actions cause an imminent threat to the child's health or safety.

(4) The court may order the department to submit a dispositional plan if such a plan would assist the court in ordering a suitable disposition in the case. The plan, if ordered, shall address the needs of the child, and the perceived needs of the parents if the order was entered under subsection (2)(d) of this section or if specifically agreed to by the parents. If the parents do not agree or the order was not entered under subsection (2)(d) of this section the plan may only make recommendations regarding services in which the parents may voluntarily participate. If the court orders the department to prepare a plan, the department shall provide copies of the plan to the parent, the child, and the court. If the parties or the court desire the department to be involved in any future proceedings or case plan development, the department shall be provided with timely notification of all court hearings.

(5) A child who fails to comply with a court order issued under this section shall be subject to contempt proceedings, as provided in this chapter, but only if the noncompliance occurs within one year after the entry of the order.

(6) After the court approves or orders an out-of-home placement, the parents or the department may request, and the court may grant, dismissal of the child in need of services proceeding when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

(7) The court shall dismiss a placement made under subsection (2)(c) of this section upon the request of the parents. [1997 c 146 § 7; 1996 c 133 § 24; 1995 c 312 § 20.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010

13.32A.180 Out-of-home placement—Court order—No placement in secure residence. (1) If the court orders a three-month out-of-home placement for the child, the court shall specify the person or agency with whom the child shall be placed, those parental powers which will be temporarily awarded to such agency or person including but not limited to the right to authorize medical, dental, and optical treatment, and parental visitation rights. Any agency or residence at which the child is placed must, at a minimum, comply with minimum standards for licensed family foster homes.

(2) No placement made pursuant to this section may be in a secure residence as defined by the federal Juvenile Justice and Delinquency Prevention Act of 1974. [1995 c 312 § 23; 1979 c 155 § 32.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.190 Out-of-home placement dispositional order—Review hearings—Time limitation on out-of-home placement—Termination of placement at request of parent. (1) Upon making a dispositional order under RCW 13.32A.179, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel and/or a guardian ad litem to represent the child at the review hearing, advise parents of their right to be represented by legal counsel at the review hearing, and notify the parties of their rights to present evidence at the hearing. Where resources are available, the court shall encourage the parent and child to participate in programs for reconciliation of their conflict.

(2) At the review hearing, the court shall approve or disapprove the continuation of the dispositional plan in accordance with this chapter. The court shall determine whether reasonable efforts have been made to reunify the family and make it possible for the child to return home. The court shall discontinue the placement and order that the child return home if the court has reasonable grounds to believe that the parents have made reasonable efforts to resolve the conflict and the court has reason to believe that the child's refusal to return home is capricious. If out-of-home placement is continued, the court may modify the dispositional plan.

(3) Out-of-home placement may not be continued past one hundred eighty days from the day the review hearing

commenced. The court shall order the child to return to the home of the parent at the expiration of the placement. If an out-of-home placement is disapproved prior to one hundred eighty days, the court shall enter an order requiring the child to return to the home of the child's parent.

(4) The parents and the department may request, and the juvenile court may grant, dismissal of an out-of-home placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

(5) The court shall terminate a placement made under this section upon the request of a parent unless the placement is made pursuant to RCW 13.32A.179(3).

(6) The court may dismiss a child in need of services petition filed by a parent at any time if the court finds good cause to believe that continuation of out-of-home placement would serve no useful purpose.

(7) The court shall dismiss a child in need of services proceeding if the child is the subject of a proceeding under chapter 13.34 RCW. [1996 c 133 § 25; 1995 c 312 § 24; 1989 c 269 § 5; 1984 c 188 § 2; 1981 c 298 § 13; 1979 c 155 § 33.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.191 At-risk youth—Petition by parent. (1) A child's parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth. The department shall, when requested, assist the parent in filing the petition. The petition shall be filed in the county where the petitioner resides. The petition shall set forth the name, age, and residence of the child and the names and residence of the child's parents and shall allege that:

(a) The child is an at-risk youth as defined in this chapter;

(b) The petitioner has the right to legal custody of the child;

(c) Court intervention and supervision are necessary to assist the parent to maintain the care, custody, and control of the child; and

(d) Alternatives to court intervention have been attempted or there is good cause why such alternatives have not been attempted.

(2) The petition shall set forth facts that support the allegations in this section and shall generally request relief available under this chapter. The petition need not specify any proposed disposition following adjudication of the petition. The filing of an at-risk youth petition is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent and confers upon the court

the special jurisdiction to assist the parent in maintaining parental authority and responsibility for the child.

(3) A petition may not be filed if a dependency petition is pending under chapter 13.34 RCW. [1995 c 312 § 25.]

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.192 At-risk youth petition—Prehearing procedures. (1) When a proper at-risk youth petition is filed by a child's parent under this chapter, the juvenile court shall:

(a)(i) Schedule a fact-finding hearing to be held: (A) For a child who resides in a place other than his or her parent's home and other than an out-of-home placement, within five calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the preceding judicial day; or (B) for a child living at home or in an out-of-home placement, within ten days; and (ii) notify the parent and the child of such date;

(b) Notify the parent of the right to be represented by counsel at the parent's own expense;

(c) Appoint legal counsel for the child;

(d) Inform the child and his or her parent of the legal consequences of the court finding the child to be an at-risk youth; and

(e) Notify the parent and the child of their rights to present evidence at the fact-finding hearing.

(2) Unless out-of-home placement of the child is otherwise authorized or required by law, the child shall reside in the home of his or her parent or in an out-of-home placement requested by the parent or child and approved by the parent.

(3) If upon sworn written or oral declaration of the petitioning parent, the court has reason to believe that a child has willfully and knowingly violated a court order issued pursuant to subsection (2) of this section, the court may issue an order directing law enforcement to take the child into custody and place the child in a juvenile detention facility or in a secure facility within a crisis residential center. If the child is placed in detention, a review shall be held as provided in RCW 13.32A.065.

(4) If both a child in need of services petition and an at-risk youth petition have been filed with regard to the same child, the petitions and proceedings shall be consolidated as an at-risk youth petition. Pending a fact-finding hearing regarding the petition, the child may be placed in the parent's home or in an out-of-home placement if not already placed in a temporary out-of-home placement pursuant to a child in need of services petition. The child or the parent may request a review of the child's placement including a review of any court order requiring the child to reside in the parent's home. [1997 c 146 § 8; 1996 c 133 § 26; 1995 c 312 § 26; 1990 c 276 § 12.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

13.32A.194 At-risk youth petition—Court procedures. (1) The court shall hold a fact-finding hearing to consider a proper at-risk youth petition. The court shall

grant the petition and enter an order finding the child to be an at-risk youth if the allegations in the petition are established by a preponderance of the evidence, unless the child is the subject of a proceeding under chapter 13.34 RCW. If the petition is granted, the court shall enter an order requiring the child to reside in the home of his or her parent or in an out-of-home placement as provided in RCW 13.32A.192(2).

(2) The court may order the department to submit a dispositional plan if such a plan would assist the court in ordering a suitable disposition in the case. If the court orders the department to prepare a plan, the department shall provide copies of the plan to the parent, the child, and the court. If the parties or the court desire the department to be involved in any future proceedings or case plan development, the department shall be provided timely notification of all court hearings.

(3) A dispositional hearing shall be held no later than fourteen days after the fact-finding hearing. Each party shall be notified of the time and date of the hearing.

(4) If the court grants or denies an at-risk youth petition, a statement of the written reasons shall be entered into the records. If the court denies an at-risk youth petition, the court shall verbally advise the parties that the child is required to remain within the care, custody, and control of his or her parent. [1996 c 133 § 27; 1995 c 312 § 27; 1990 c 276 § 13.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

13.32A.196 At-risk youth petition—Dispositional hearing. (1) At the dispositional hearing regarding an adjudicated at-risk youth, the court shall consider the recommendations of the parties and the recommendations of any dispositional plan submitted by the department. The court may enter a dispositional order that will assist the parent in maintaining the care, custody, and control of the child and assist the family to resolve family conflicts or problems.

(2) The court may set conditions of supervision for the child that include:

(a) Regular school attendance;

(b) Counseling;

(c) Participation in a substance abuse or mental health outpatient treatment program;

(d) Reporting on a regular basis to the department or any other designated person or agency; and

(e) Any other condition the court deems an appropriate condition of supervision including but not limited to: Employment, participation in an anger management program, and refraining from using alcohol or drugs.

(3) No dispositional order or condition of supervision ordered by a court pursuant to this section shall include involuntary commitment of a child for substance abuse or mental health treatment.

(4) The court may order the parent to participate in counseling services or any other services for the child requiring parental participation. The parent shall cooperate with the court-ordered case plan and shall take necessary

steps to help implement the case plan. The parent shall be financially responsible for costs related to the court-ordered plan; however, this requirement shall not affect the eligibility of the parent or child for public assistance or other benefits to which the parent or child may otherwise be entitled.

(5) The parent may request dismissal of an at-risk youth proceeding or out-of-home placement at any time and upon such a request, the court shall dismiss the matter and cease court supervision of the child unless: (a) A contempt action is pending in the case; (b) a petition has been filed under RCW 13.32A.150 and a hearing has not yet been held under RCW 13.32A.179; or (c) an order has been entered under RCW 13.32A.179(3) and the court retains jurisdiction under that subsection. The court may retain jurisdiction over the matter for the purpose of concluding any pending contempt proceedings, including the full satisfaction of any penalties imposed as a result of a contempt finding.

(6) The court may order the department to monitor compliance with the dispositional order, assist in coordinating the provision of court-ordered services, and submit reports at subsequent review hearings regarding the status of the case. [1995 c 312 § 28; 1991 c 364 § 14; 1990 c 276 § 14.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

13.32A.197 Disposition hearing—Additional orders for specialized treatment—Review hearings—Limitation—Use of state funds. (1) In a disposition hearing, after a finding that a child is a child in need of services or an at-risk youth, the court may adopt the additional orders authorized under this section if it finds that the child involved in those proceedings is not eligible for inpatient treatment for a mental health or substance abuse condition and requires specialized treatment. The court may order that a child be placed in a staff secure facility, other than a crisis residential center, that will provide for the child's participation in a program designed to remedy his or her behavioral difficulties or needs. The court may not enter this order unless, at the disposition hearing, it finds that the placement is clearly necessary to protect the child and that a less restrictive order would be inadequate to protect the child, given the child's age, maturity, propensity to run away from home, past exposure to serious risk when the child ran away from home, and possible future exposure to serious risk should the child run away from home again.

(2) The order shall require periodic court review of the placement, with the first review hearing conducted not more than thirty days after the date of the placement. At each review hearing the court shall advise the parents of their rights under RCW 13.32A.160(1), review the progress of the child, and determine whether the orders are still necessary for the protection of the child or a less restrictive placement would be adequate. The court shall modify its orders as it finds necessary to protect the child. Reviews of orders adopted under this section are subject to the review provisions under RCW 13.32A.190 and 13.32.198 [13.32A.198].

(3) Placements in staff secure facilities under this section shall be limited to children who meet the statutory

definition of a child in need of services or an at-risk youth as defined in RCW 13.32A.030.

(4) State funds may only be used to pay for placements under this section if, and to the extent that, such funds are appropriated to expressly pay for them. [1996 c 133 § 3.]

Findings—1996 c 133: "The legislature finds that no children should be exposed to the dangers inherent in living on the streets. The legislature further finds that there are children who are not mentally ill or chemically dependent who are living on the street in dangerous situations. These children through their at-risk behavior place themselves at great personal risk and danger. The legislature further finds that these children with at-risk behaviors should receive treatment for their problems that result in excessive opposition to parental authority." [1996 c 133 § 1.]

Short title—1996 c 133: "This act shall be known and cited as the "Becca Too" bill." [1996 c 133 § 2.]

Intent—Construction—1996 c 133: "It is the intent of the legislature that the changes in this act be construed to expedite the administrative and judicial processes provided for in the existing and amended statutes to assist in assuring that children placed in a crisis residential center have an appropriate placement available to them at the conclusion of their stay at the center." [1996 c 133 § 38.]

13.32A.198 At-risk youth—Review by court. (1) Upon making a disposition regarding an adjudicated at-risk youth, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel for the child, advise the parent of the right to be represented by legal counsel at the review hearing at the parent's own expense, and notify the parties of their rights to present evidence at the hearing.

(2) At the review hearing, the court shall approve or disapprove the continuation of court supervision in accordance with the goal of assisting the parent to maintain the care, custody, and control of the child. The court shall determine whether the parent and child are complying with the dispositional plan. If court supervision is continued, the court may modify the dispositional plan.

(3) Court supervision of the child may not be continued past one hundred eighty days from the day the review hearing commenced unless the court finds, and the parent agrees, that there are compelling reasons for an extension of supervision. Any extension granted pursuant to this subsection shall not exceed ninety days.

(4) The court may dismiss an at-risk youth proceeding at any time if the court finds good cause to believe that continuation of court supervision would serve no useful purpose or that the parent is not cooperating with the court-ordered case plan. The court shall dismiss an at-risk youth proceeding if the child is the subject of a proceeding under chapter 13.34 RCW. [1990 c 276 § 15.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

13.32A.200 Hearings under chapter—Time or place—General public excluded. All hearings pursuant to this chapter may be conducted at any time or place within the county of the residence of the parent and such cases shall not be heard in conjunction with the business of any other division of the superior court. The general public shall be excluded from hearings and only such persons who are found by the court to have a direct interest in the case or the work of the court shall be admitted to the proceedings. [1979 c 155 § 34.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.205 Acceptance of petitions by court—Damages. No superior court may refuse to accept for filing a properly completed and presented child in need of services petition or an at-risk youth petition. To be properly presented, the petitioner shall verify that the family assessment required under RCW 13.32A.150 has been completed. In the event of an improper refusal that is appealed and reversed, the petitioner shall be awarded actual damages, costs, and attorneys' fees. [1995 c 312 § 32.]

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.210 Foster home placement—Parental preferences. In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child. Preferences such as family constellation, ethnicity, and religion shall be given consideration when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and should be integrated through the foster care team. [1990 c 284 § 24.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

13.32A.250 Failure to comply with order as civil contempt—Motion—Penalties. (1) In all child in need of services proceedings and at-risk youth proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter. Except as otherwise provided in this section, the court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section.

(2) Failure by a party to comply with an order entered under this chapter is a civil contempt of court as provided in RCW 7.21.030(2)(e), subject to the limitations of subsection (3) of this section.

(3) The court may impose remedial sanctions including a fine of up to one hundred dollars and confinement for up to seven days, or both for contempt of court under this section.

(4) A child placed in confinement for contempt under this section shall be placed in confinement only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(5) A motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order adopted pursuant to this chapter.

(6) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be

entered *ex parte* without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065. [1998 c 296 § 37; 1996 c 133 § 28; 1995 c 312 § 29; 1990 c 276 § 16. Prior: 1989 c 373 § 16; 1989 c 269 § 4; 1981 c 298 § 14.]

Findings—Intent—1998 c 296 §§ 36-39: See note following RCW 7.21.030.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1989 c 373: See RCW 7.21.900.

Severability—1981 c 298: See note following RCW 13.32A.040.

13.32A.300 No entitlement to services created by chapter. Nothing in this chapter shall be construed to create an entitlement to services nor to create judicial authority to order the provision at public expense of services to any person or family where the department has determined that such services are unavailable or unsuitable or that the child or family are not eligible for such services. [1995 c 312 § 43.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Chapter 13.34

JUVENILE COURT ACT—DEPENDENCY AND TERMINATION OF PARENT-CHILD RELATIONSHIP

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RCW 74.13.037.

13.34.010 Short title. This chapter shall be known as the "Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship" [1977 ex.s. c 291 § 29.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.020 Legislative declaration of family unit as resource to be nurtured—Rights of child. The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter. [1998 c 314 § 1; 1990 c 284 § 31; 1987 c 524 § 2; 1977 ex.s. c 291 § 30.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.030 Definitions. For purposes of this chapter:

(1) "Child" and "juvenile" means any individual under the age of eighteen years.

(2) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until the child returns home, an adoption decree, a permanent custody order, or guardianship order is entered, or the dependency is dismissed, whichever occurs soonest. If the most recent date of removal occurred prior to the filing of a dependency petition under this chapter or after filing but prior to entry of a disposition order, such time periods shall be included when calculating the length of a child's current placement episode.

(3) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to RCW 13.34.232 for the limited purpose of assisting the court in the supervision of the dependency.

(4) "Dependent child" means any child:

(a) Who has been abandoned; that is, where the child's parent, guardian, or other custodian has expressed either by statement or conduct, an intent to forego, for an extended period, parental rights or parental responsibilities despite an ability to do so. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon;

(b) Who is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Who has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(5) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(6) "Guardian ad litem" means a person, appointed by the court to represent the best interest of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(7) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(8) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(9) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services capable of preventing the need for out-of-home placement while protecting the child. [1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Conflict with federal requirements—1993 c 241: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1993 c 241 § 5.]

Severability—1988 c 176: See RCW 71A.10.900.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

Severability—1982 c 129: See note following RCW 9A.04.080.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.040 Petition to court to deal with dependent 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 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, as defined in this chapter, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of such dependent child. There shall be no fee for filing such petitions. [1977 ex.s. c 291 § 32; 1913 c 160 § 5; RRS § 1987-5. Formerly RCW 13.04.060.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.050 Court order to take child into custody, when—Hearing. (1) The court may enter an order directing a law enforcement officer, probation counselor, or child protective services official to take a child into custody if: (a) A petition is filed with the juvenile court alleging that the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody; (b) an affidavit or declaration is filed by the department in support of the petition setting forth specific factual information evidencing reasonable grounds that the child's health, safety, and welfare will be seriously endangered if not taken into custody and at least one of the grounds set forth demonstrates a risk of imminent harm to the child. "Imminent harm" for purposes of this section shall include, but not be limited to, circumstances of sexual abuse, or sexual exploitation as defined in RCW 26.44.020; and (c) the court finds reasonable grounds to believe the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody.

(2) Any petition that does not have the necessary affidavit or declaration demonstrating a risk of imminent harm requires notice and an opportunity to be heard by the parents.

(3) The petition and supporting documentation must be served on the parent and the entity with whom the child is in custody at the time the child is removed. Failure to effect service does not invalidate the petition if service was attempted and the parent could not be found. [1998 c 328 § 1; 1979 c 155 § 38; 1977 ex.s. c 291 § 33.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.055 Custody by law enforcement officer—Release from liability. (1) A law enforcement officer shall take into custody a child taken in violation of RCW

9A.40.060 or 9A.40.070. The law enforcement officer shall make every reasonable effort to avoid placing additional trauma on the child by obtaining such custody at times and in a manner least disruptive to the child. The law enforcement officer shall return the child to the person or agency having the right to physical custody unless the officer has reasonable grounds to believe the child should be taken into custody under RCW 13.34.050 or 26.44.050. If there is no person or agency having the right to physical custody available to take custody of the child, the officer may place the child in shelter care as provided in RCW 13.34.060.

(2) A law enforcement officer or public employee acting reasonably and in good faith shall not be held liable in any civil action for returning the child to a person having the apparent right to physical custody. [1984 c 95 § 4.]

Severability—1984 c 95: See note following RCW 9A.40.060.

13.34.060 Placing child in shelter care—Court procedures and rights of parties—Release. (1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055. "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to that section. Whenever a child is taken into such custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility. No child may be held longer than seventy-two hours, excluding Saturdays, Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have a right to a shelter care hearing. The court shall hold a shelter care hearing within seventy-two hours after the child is taken into custody, excluding Saturdays, Sundays, and holidays. If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, that such waiver is knowing and voluntary.

(2) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parents, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title as soon as possible and in no event longer than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody. The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is

provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

The written notice of custody and rights shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody. You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number)."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(3) If child protective services is not required to give notice under subsection (2) of this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in subsections (2) and (3) of this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the juvenile court counselor or caseworker shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or legal custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used.

(5) At the commencement of the shelter care hearing the court shall advise the parties of their basic rights as provided in RCW 13.34.090 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not been retained by the parent or guardian and if the parent or guardian is indigent, unless the court finds that the right to counsel has been expressly and voluntarily waived in court.

(6) The court shall hear evidence regarding notice given to, and efforts to notify, the parent, guardian, or legal custodian and shall examine the need for shelter care. The court shall make an express finding as to whether the notice required under subsections (2) and (3) of this section was given to the parent, guardian, or legal custodian. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care. Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(7) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care, except that such recommendation shall be submitted by the department of social and health services in cases where the petition alleging dependency has been filed by the department of social and health services, unless otherwise ordered by the court.

(8) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(a) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(b)(i) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(ii) The release of such child would present a serious threat of substantial harm to such child; or

(iii) The parent, guardian, or custodian to whom the child could be released is alleged to have violated RCW 9A.40.060 or 9A.40.070.

If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. The court shall enter a finding as to whether subsections (2) and (3) of this section have been complied with. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090.

(9) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent and give weight to that fact before ordering return of the child to shelter care.

(10) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be detained for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(11) Any parent, guardian, or legal custodian who for good cause is unable to attend the initial shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. The hearing shall be held within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means. [1998 c 328 § 2; 1990 c 246 § 1; 1987 c 524 § 4. Prior: 1984 c 188 § 3; 1984 c 95 § 5; 1983 c 246 § 1; 1982 c 129 § 5; 1979 c 155 § 39; 1977 ex.s. c 291 § 34.]

Severability—1990 c 246: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 246 § 11.]

Severability—1984 c 95: See note following RCW 9A.40.060.

Severability—1982 c 129: See note following RCW 9A.04.080.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.070 Summons when petition filed—Service procedure—Hearing, when—Contempt upon failure to appear. (1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances do exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or [her] right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

**NOTICE:
VIOLATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.**

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy thereof by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy thereof to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department of social and health services social worker.

(10) In any proceeding brought under this chapter where the court knows or has reason to know that the child involved is a member of an Indian tribe, notice of the pendency of the proceeding shall also be sent by registered mail, return receipt requested, to the child's tribe. If the

identity or location of the tribe cannot be determined, such notice shall be transmitted to the secretary of the interior of the United States. [1993 c 358 § 1; 1990 c 246 § 2; 1988 c 194 § 2; 1983 c 311 § 3; 1983 c 3 § 16; 1979 c 155 § 40; 1977 ex.s. c 291 § 35; 1913 c 160 § 6; RRS § 1987-6. Formerly RCW 13.04.070.]

Severability—1990 c 246: See note following RCW 13.34.060.

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.080 Summons when petition filed—Publication. In a dependency case where it appears 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 nonresident 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 13.34.070, and a copy of the notice has been deposited in the post office, postage prepaid, directed to such person at his last known place of residence, the court shall direct the clerk to publish notice in a legal newspaper printed in the county, qualified to publish summons, once a week for three consecutive weeks, with the first publication of the notice to be at least twenty-five days prior to the date fixed for the hearing. If the parent, guardian, or legal custodian is believed to be a resident of another state or a county other than the county in which the petition has been filed, notice also shall be published in the county in which the parent, guardian, or legal custodian is believed to reside. Additionally, publication may proceed simultaneously with efforts to provide personal service or service by mail for good cause shown, when there is reason to believe that personal service or service by mail will not be successful. 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, 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. [1990 c 246 § 3; 1988 c 201 § 1; 1979 c 155 § 41; 1977 ex.s. c 291 § 36; 1961 c 302 § 4; 1913 c 160 § 7; RRS § 1987-7. Formerly RCW 13.04.080.]

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.090 Rights under chapter proceedings. (1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact-finder.

(2) At all stages of a proceeding in which a child is alleged to be dependent as defined in RCW 13.34.030(4), the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency as defined in chapter 10.101 RCW.

(3) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

(4) Copies of department of social and health services or supervising agency records to which parents have legal access pursuant to chapter 13.50 RCW shall be given to the child's parent, guardian, legal custodian, or his or her legal counsel, prior to any shelter care hearing and within fifteen days after the department or supervising agency receives a written request for such records from the parent, guardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel a reasonable period of time prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the parents, guardian, legal custodian, or his or her counsel. When the records are served on legal counsel, legal counsel shall have the opportunity to review the records with the parents and shall review the records with the parents prior to the shelter care hearing. [1998 c 328 § 3; 1998 c 141 § 1; 1990 c 246 § 4; 1979 c 155 § 42; 1977 ex.s. c 291 § 37.]

Reviser's note: This section was amended by 1998 c 141 § 1 and by 1998 c 328 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Notice of rights: RCW 26.44.105.

13.34.100 Appointment of guardian ad litem—Background information—Rights—Appointment of counsel for child—Review. (1) The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by independent counsel in the proceedings.

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the

proceeding or the party's employee or representative shall not be so appointed.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background file shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) Training related to the guardian's duties;
- (c) Number of years' experience as a guardian ad litem;
- (d) Number of appointments as a guardian ad litem and the county or counties of appointment; and
- (e) Criminal history, as defined in RCW 9.94A.030.

The background information report shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person shall provide the background information to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a statement containing his or her training relating to the duties as a guardian ad litem and criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment. The background statement shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

(6) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.

(7) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to represent the best interests of the minor in proceedings before the court.

(8) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends and the appointment shall be effective immediately. The court shall appoint the person recommended by the program. If a party in a case reasonably believes the court-appointed special advocate or volunteer is inappropriate or unqualified, the party may request a review of the appointment by the

program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate on the grounds the advocate or volunteer is inappropriate or unqualified. [1996 c 249 § 13; 1994 c 110 § 2; 1993 c 241 § 2; 1988 c 232 § 1; 1979 c 155 § 43; 1977 ex.s. c 291 § 38.]

Intent—1996 c 249: See note following RCW 2.56.030.

Conflict with federal requirements—1993 c 241: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.102 Guardian ad litem—Training—Registry—Selection—Substitution—Exception. (1) All guardians ad litem, who have not previously served or been trained as a guardian ad litem in this state, who are appointed after January 1, 1998, must complete the curriculum developed by the office of the administrator for the courts under RCW 2.56.030(15), prior to their appointment in cases under Title 13 RCW except that volunteer guardians ad litem or court-appointed special advocates accepted into a volunteer program after January 1, 1998, may complete an alternative curriculum approved by the office of the administrator for the courts that meets or exceeds the state-wide curriculum.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 13.34.100(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [1997 c 41 § 6; 1996 c 249 § 17.]

Intent—1996 c 249: See note following RCW 2.56.030.

13.34.105 Guardian ad litem—Duties—Immunity—Access to information. (1) Unless otherwise directed by the court, the duties of the guardian ad litem include but are not limited to the following:

(a) To represent and be an advocate for the best interests of the child;

(b) To collect relevant information about the child's situation;

(c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order; and

(d) To report to the court information on the legal status of a child's membership in any Indian tribe or band.

(2) The guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(4), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100. [1993 c 241 § 3.]

Conflict with federal requirements—1993 c 241: See note following RCW 13.34.030.

13.34.110 Hearings, fact-finding and disposition—Time and place, notice—Not generally public—Notes and records. The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor, and after it has announced its findings of fact shall hold a hearing to consider disposition of the case immediately following the fact-finding hearing or at a continued hearing within fourteen days or longer for good cause shown. Unless there is reasonable cause to believe the safety or welfare of the child would be jeopardized or efforts to reunite the parent and child would be hindered, the court shall direct the department to notify those adult persons who: (1) Are related by blood or marriage to the child in the following degrees: Parent, grandparent, brother, sister, step-parent, stepbrother, stepsister, uncle, or aunt; (2) are known to the department as having been in contact with the family or child within the past twelve months; and (3) would be an appropriate placement for the child. The parties need not appear at the fact-finding or dispositional hearing if the parties, their attorneys, the guardian ad litem, and court-appointed special advocates, if any, are all in agreement. The court shall receive and review a social study before entering an order based on agreement. No social file or social study may be considered by the court in connection with the fact-finding hearing or prior to factual determination, except as otherwise admissible under the rules of evidence. Notice of the time and place of the continued hearing may be given in

open court. If notice in open court is not given to a party, that party shall be notified by mail of the time and place of any continued hearing.

All hearings may be conducted at any time or place within the limits of the county, and such cases may not be heard in conjunction with other business of any other division of the superior court. The general public shall be excluded, and only such persons may be admitted who are found by the judge to have a direct interest in the case or in the work of the court. Unless the court states on the record the reasons to disallow attendance, the court shall allow a child's relatives and, if a child resides in foster care, the child's foster parent, to attend all hearings and proceedings pertaining to the child for the sole purpose of providing oral and written information about the child and the child's welfare to 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. [1995 c 313 § 1; 1995 c 311 § 27; 1993 c 412 § 7; 1991 c 340 § 3; 1983 c 311 § 4; 1979 c 155 § 44; 1977 ex.s. c 291 § 39; 1961 c 302 § 5. Prior: 1913 c 160 § 10, part; RCW 13.04.090, part. Formerly RCW 13.04.091.]

Reviser's note: This section was amended by 1995 c 311 § 27 and by 1995 c 313 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.120 Social study and reports made available at disposition hearing—Predisposition study—Contents—Notice to parents. (1) To aid the court in its decision on disposition, a social study, consisting of a written evaluation of matters relevant to the disposition of the case, shall be made by the person or agency filing the petition. A parent may submit a counselor's or health care provider's evaluation of the parent, which shall either be included in the social study or considered in conjunction with the social study. The study shall include all social records and may also include facts relating to the child's cultural heritage, and shall be made available to the court. The court shall consider the social file, social study, guardian ad litem report, the court-appointed special advocate's report, if any, and any reports filed by a party at the disposition hearing in addition to evidence produced at the fact-finding hearing. At least ten working days before the disposition hearing, the department shall mail to the parent and his or her attorney a copy of the agency's social study and proposed service plan, which shall be in writing or in a form understandable to the parents or custodians. In addition, the department shall provide an opportunity for parents to review and comment on the plan at the community service office. If the parents disagree with the agency's plan or any part thereof, the parents shall submit to the court at least twenty-four hours before the hearing, in writing, or signed oral statement, an alternative plan to correct the problems which led to the finding of dependency. This section shall not interfere with

the right of the parents or custodians to submit oral arguments regarding the disposition plan at the hearing.

(2) In addition to the requirements set forth in subsection (1) of this section, a predisposition study to the court in cases of dependency alleged pursuant to RCW 13.34.030(4)(b) or (c) shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific programs, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such programs are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs which have been considered and rejected; the preventive services that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal. This section should include an exploration of the nature of the parent-child attachment and the meaning of separation and loss to both the parents and the child;

(e) A description of the steps that will be taken to minimize harm to the child that may result if separation occurs; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary. [1998 c 328 § 4; 1996 c 249 § 14; 1994 c 288 § 2; 1993 c 412 § 8; 1987 c 524 § 5; 1979 c 155 § 45; 1977 ex.s. c 291 § 40.]

Intent—1996 c 249: See note following RCW 2.56.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Permanency plan of care—Placement with relatives—Review hearings. If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030; after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endan-

gered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is related to the child as defined in *RCW 74.15.020(4)(a) and with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(i) There is no parent or guardian available to care for such child;

(ii) The parent, guardian, or legal custodian is not willing to take custody of the child;

(iii) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or

(iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds: (a) Termination is recommended by the supervising agency; (b) termination is in the best interests of the child; and (c) that because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interest of the child. In determining whether aggravated circumstances exist, the court shall consider one or more of the following:

(i) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(ii) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(iii) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(iv) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(v) Conviction of the parent of attempting, soliciting, or conspiracy to commit a crime listed in (c)(i), (ii), (iii), or (iv) of this subsection;

(vi) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(vii) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. [Sec.] 1903), the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(viii) An infant under three years of age has been abandoned as defined in RCW 13.34.030(4)(a);

(ix) The mother has given birth to three or more drug-affected infants, resulting in the department filing a petition under **section 23** of this act.

(3) If reasonable efforts are not ordered under subsection (2) of this section a permanency plan [planning] hearing shall be held within thirty days. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older. Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a

specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

(5) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for

removal of the child from the relative's home, subject to review by the court.

(7) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits. The supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed. [1998 c 314 § 2; 1998 c 130 § 2; 1997 c 280 § 1. Prior: 1995 c 313 § 2; 1995 c 311 § 19; 1995 c 53 § 1; 1994 c 288 § 4; 1992 c 145 § 14; 1991 c 127 § 4; prior: 1990 c 284 § 32; 1990 c 246 § 5; 1989 1st ex.s. c 17 § 17; prior: 1988 c 194 § 1; 1988 c 190 § 2; 1988 c 189 § 2;

1984 c 188 § 4; prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

Reviser's note: *(1) Due to an alphabetization directive by 1998 c 269 § 18, subsection (4)(a) is now subsection (2)(a).

** (2) Section 23, chapter 314, Laws of 1998 was vetoed.

(3) This section was amended by 1998 c 130 § 2 and by 1998 c 314 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Severability—1990 c 246: See note following RCW 13.34.060.

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.145 Permanency plan required—Permanency planning hearing—Time limits—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights (as amended by 1998 c 130). (1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(a) Whenever a child is placed in out-of-home care pursuant to RCW 13.34.130, the agency that has custody of the child shall provide the court with a written permanency plan of care directed towards securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older and the provisions of subsection (2) of this section are met.

(b) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(d) For purposes related to permanency planning:

(i) "Guardianship" means a dependency guardianship pursuant to this chapter, a legal guardianship pursuant to chapter 11.88 RCW, or equivalent laws of another state or a federally recognized Indian tribe.

(ii) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(iii) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or of a federally recognized Indian tribe.

(2) Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(3)(a) For children ten and under, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree (~~or~~) guardianship order, or

permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) For children over ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree ~~((or))~~, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.

(4) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve or eighteen months, as provided in subsection (3) of this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree ~~((or))~~, guardianship order, or permanent custody order is entered, or the dependency is dismissed.

(5) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(6) At the permanency planning hearing, the court shall enter findings as required by *RCW 13.34.130(5) and shall review the permanency plan prepared by the agency. If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280. If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate. In cases where the primary permanency planning goal has not yet been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. In all cases, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to *RCW 13.34.130(5), and the court shall determine the need for continued intervention.

(8) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when, (a) the court has ordered implementation of a permanency plan that includes legal guardianship or permanent legal custody, and (b) the party pursuing the legal guardianship or permanent legal custody is the party identified in the permanency plan as the prospective legal guardian or custodian. During the pendency of such proceeding, juvenile court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

~~((9))~~ (10) Except as otherwise provided in RCW 13.34.235, the status of all dependent children shall continue to be reviewed by the court at least once every six months, in accordance with *RCW 13.34.130(5), until the dependency is dismissed. Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

~~((10))~~ (11) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time

following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

~~((11))~~ (12) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights.

~~((12))~~ (13) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter. [1998 c 130 § 3. Prior: 1995 c 311 § 20; 1995 c 53 § 2; 1994 c 288 § 5; 1993 c 412 § 1; 1989 1st ex.s. c 17 § 18; 1988 c 194 § 3.]

Reviser's note: RCW 13.34.130 was amended by 1998 c 314 § 2, changing subsection (5) to subsection (7).

13.34.145 Permanency plan required—Permanency planning hearing—Time limits—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights (as amended by 1998 c 314). (1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(a) Whenever a child is placed in out-of-home care pursuant to RCW 13.34.130, the agency that has custody of the child shall provide the court with a written permanency plan of care directed towards securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older and the provisions of subsection (2) of this section are met.

(b) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

~~((a))~~ (3) ~~For children ten and under,)~~ A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

~~((b))~~ ~~For children over ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.)~~

(4) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve ~~((or eighteen))~~ months, as provided in subsection (3) of this section, following the date of removal unless, prior to the hearing, the child

returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree or guardianship order is entered, or the dependency is dismissed.

(5) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(6) At the permanency planning hearing, the court shall enter findings as required by RCW 13.34.130(~~(4)~~) (7) and shall review the permanency plan prepared by the agency. If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280 and 13.34.130(7). If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate. In cases where the primary permanency planning goal has not yet been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. In all cases, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.130(~~(4)~~) (7), and the court shall determine the need for continued intervention.

(8) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(9) Except as otherwise provided in RCW 13.34.235, the status of all dependent children shall continue to be reviewed by the court at least once every six months, in accordance with RCW 13.34.130(~~(4)~~) (7), until the dependency is dismissed. Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter. [1998 c 314 § 3. Prior: 1995 c 311 § 20; 1995 c 53 § 2; 1994 c 288 § 5; 1993 c 412 § 1; 1989 1st ex.s. c 17 § 18; 1988 c 194 § 3.]

Reviser's note: RCW 13.34.145 was amended twice during the 1998 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

13.34.150 Modification of orders. Any order made by the court in the case of a dependent child may be changed, modified, or set aside, only upon a showing of a change in circumstance or as provided in RCW 13.34.120. [1993 c 412 § 9; 1990 c 246 § 6; 1977 ex.s. c 291 § 43;

1913 c 160 § 15; RRS § 1987-15. Formerly RCW 13.04.150.]

Severability—1990 c 246: See note following RCW 13.34.060.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.160 Order of support for dependent child.

(1) In an action brought under this chapter, the court may inquire into the ability of the parent or parents of the child to pay child support and may enter an order of child support as set forth in chapter 26.19 RCW. The court may enforce the same by execution, or in any way in which a court of equity may enforce its decrees. All child support orders entered pursuant to this chapter shall be in compliance with the provisions of RCW 26.23.050.

(2) For purposes of this section, if a dependent child's parent is an unmarried minor parent or pregnant minor applicant, then the parent or parents of the minor shall also be deemed a parent or parents of the dependent child. However, liability for child support under this subsection only exists if the parent or parents of the unmarried minor parent or pregnant minor applicant are provided the opportunity for a hearing on their ability to provide support. Any child support order requiring such a parent or parents to provide support for the minor parent's child may be effective only until the minor parent reaches eighteen years of age. [1997 c 58 § 505; 1993 c 358 § 2; 1987 c 435 § 14; 1981 c 195 § 8; 1977 ex.s. c 291 § 44; 1969 ex.s. c 138 § 1; 1961 c 302 § 7; 1913 c 160 § 8; RRS § 1987-8. Formerly RCW 13.04.100.]

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

Effective date—1987 c 435: See RCW 26.23.900.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.162 Child support schedule.

Reviser's note: RCW 13.34.162 was amended by 1993 c 412 § 10 without reference to its repeal by 1993 c 358 § 6. It has been decodified for publication purposes pursuant to RCW 1.12.025.

13.34.165 Civil contempt—Grounds—Motion—Penalty—Detention review hearing. (1) Failure by a party to comply with an order entered under this chapter is civil contempt of court as provided in RCW 7.21.030(2)(e).

(2) The maximum term of imprisonment that may be imposed as a remedial sanction for contempt of court under this section is confinement for up to seven days.

(3) A child imprisoned for contempt under this section shall be confined only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(4) A motion for contempt may be made by a parent, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order entered pursuant to this chapter.

(5) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to

pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065. [1998 c 296 § 38; 1996 c 133 § 29; 1989 c 373 § 17; 1985 c 257 § 1.]

Findings—Intent—1998 c 296 §§ 36-39: See note following RCW 7.21.030.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Severability—1989 c 373: See RCW 7.21.900.

Severability—1985 c 257: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 257 § 12.]

13.34.170 Judgment for financial support—Enforcement. 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 shelter 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 ten years subsequent to the entry thereof. [1981 c 195 § 9; 1977 ex.s. c 291 § 45; 1961 c 302 § 8; 1955 c 188 § 1. Formerly RCW 13.04.105.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Financial responsibility for costs of detention: RCW 13.16.085.

13.34.174 Order of alcohol or substance abuse diagnostic investigation and evaluation—Plan of treatment—Breach of plan—Reports. (1) The provisions of this section shall apply when a court orders a party to undergo an alcohol or substance abuse diagnostic investigation and evaluation.

(2) The facility conducting the investigation and evaluation shall make a written report to the court stating its findings and recommendations including family-based services or treatment when appropriate. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

- (a) Type of treatment;
- (b) Nature of treatment;
- (c) Length of treatment;

(d) A treatment time schedule; and

(e) Approximate cost of the treatment.

The affected person shall be included in developing the appropriate plan of treatment. The plan of treatment must be signed by [the] treatment provider and the affected person. The initial written report based on the treatment plan and response to treatment shall be sent to appropriate persons six weeks after initiation of treatment, and after three months, after six months, after twelve months, and thereafter every six months if treatment exceeds twelve months. Reports are to be filed in a timely manner. Close-out of the treatment record must include summary of pretreatment and posttreatment, with final outcome and disposition. The report shall also include recommendations for ongoing stability and decrease in destructive behavior.

The report with the treatment plan shall be filed with the court and a copy given to the person evaluated and the person's counsel. A copy of the treatment plan shall also be given to the department's caseworker and to the guardian ad litem. Any program for chemical dependency shall meet the program requirements contained in chapter 70.96A RCW.

(3) If the court has ordered treatment pursuant to a dependency proceeding it shall also require the treatment program to provide, in the reports required by subsection (2) of this section, status reports to the court, the department, the supervising child-placing agency if any, and the person or person's counsel regarding: (a) The person's cooperation with the treatment plan proposed; and (b) the person's progress in treatment.

(4) In addition, if the party fails or neglects to carry out and fulfill any term or condition of the treatment plan, the program or agency administering the treatment shall report such breach to the court, the department, the guardian ad litem, the supervising child-placing agency if any, and the person or person's counsel, within twenty-four hours, together with its recommendation. These reports shall be made as a declaration by the person who is personally responsible for providing the treatment.

(5) Nothing in this chapter may be construed as allowing the court to require the department to pay for the cost of any alcohol or substance abuse evaluation or treatment program. [1993 c 412 § 5.]

13.34.176 Violation of alcohol or substance abuse treatment conditions—Hearing—Notice—Modification of order.

(1) The court or the department, upon receiving a report under RCW 13.34.174(4), may schedule a show cause hearing to determine whether the person is in violation of the treatment conditions. All parties shall be given notice of the hearing. The court shall hold the hearing within ten days of the request for a hearing. At the hearing, testimony, declarations, reports, or other relevant information may be presented on the person's alleged failure to comply with the treatment plan and the person shall have the right to present similar information on his or her own behalf.

(2) If the court finds that there has been a violation of the treatment conditions it shall modify the dependency order, as necessary, to ensure the safety of the child. The modified order shall remain in effect until the party is in full compliance with the treatment requirements. [1993 c 412 § 6.]

13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations. A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege:

(1) That the child has been found to be a dependent child under RCW 13.34.030(4); and

(2) That the court has entered a dispositional order pursuant to RCW 13.34.130; and

(3) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(4); and

(4) That the services ordered under RCW 13.34.130 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided; and

(5) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(a) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

(b) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and

(6) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home; or

(7) In lieu of the allegations in subsections (1) through (6) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found; or

(8) In lieu of the allegations in subsections (2) through (6) of this section, the petition may allege that the parent has been found by a court of competent jurisdiction:

(a) To have committed, against another child of such parent, murder in the first degree, murder in the second

degree, or homicide by abuse as defined in chapter 9A.32 RCW;

(b) To have committed, against another child of such parent, manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW;

(c) To have attempted, conspired, or solicited to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) To have committed assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure)

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

[1998 c 314 § 4; 1997 c 280 § 2. Prior: 1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.190 Order terminating parent and child relationship—Findings. After hearings pursuant to RCW 13.34.110, the court may enter an order terminating all parental rights to a child if the court finds that:

(1)(a) The allegations contained in the petition as provided in RCW 13.34.180 (1) through (6) are established by clear, cogent, and convincing evidence; or

(b) RCW 13.34.180 (3) and (4) may be waived because the allegations under RCW 13.34.180 (1), (2), (5), and (6) are established beyond a reasonable doubt and when an infant has been abandoned, as defined in RCW 13.34.030,

the abandonment has been proved beyond a reasonable doubt; or

(c) The allegation under RCW 13.34.180(7) is established beyond a reasonable doubt. In determining whether RCW 13.34.180 (5) and (6) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.130(2) exist; or

(d) The allegation under RCW 13.34.180(8) is established beyond a reasonable doubt; and

(2) Such an order is in the best interests of the child. [1998 c 314 § 5; 1993 c 412 § 3; 1992 c 145 § 15; 1990 c 284 § 33; 1979 c 155 § 48; 1977 ex.s. c 291 § 47.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.200 Order terminating parent and child relationship—Rights of parties when granted. (1) Upon the termination of parental rights pursuant to RCW 13.34.180, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceedings concerning the child: **PROVIDED**, That any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent and the order shall so state.

(2) An order terminating the parent and child relationship shall not disentitle a child to any benefit due the child from any third person, agency, state, or the United States, nor shall any action under this chapter be deemed to affect any rights and benefits that a native American child derives from the child's descent from a member of a federally recognized Indian tribe. [1977 ex.s. c 291 § 48.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights. If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department of social and health services or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption, or in the absence thereof in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a general guardian of the child has not been appointed by the court, the child shall be returned

to the court for entry of further orders for his or her care, custody, and control, and, except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the court shall review the case every six months thereafter until a decree of adoption is entered. [1991 c 127 § 6; 1988 c 203 § 2; 1979 c 155 § 49; 1977 ex.s. c 291 § 49.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.220 Order terminating parent and child relationship—Prevailing party to present findings, etc., to court, when. Written findings of fact, conclusions of law, and orders of termination of parent/child relationships made under this chapter shall be presented to the court by the prevailing party within thirty days of the court's decision unless extended by the court for good cause shown. [1979 c 155 § 50.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.230 Guardianship for dependent child—Petition for—Notice to, intervention by, department. Any party to a dependency proceeding, including the supervising agency, may file a petition in juvenile court requesting that guardianship be created as to a dependent child. The department of social and health services shall receive notice of any guardianship proceedings and have the right to intervene in the proceedings. [1981 c 195 § 1; 1979 c 155 § 51.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.231 Guardianship for dependent child—Hearing—Rights of parties—Rules of evidence—Guardianship established, when. At the hearing on a dependency guardianship petition, all parties have the right to present evidence and cross examine witnesses. The rules of evidence apply to the conduct of the hearing. A guardianship shall be established if the court finds by a preponderance of the evidence that:

(1) The child has been found to be a dependent child under RCW 13.34.030;

(2) A dispositional order has been entered pursuant to RCW 13.34.130;

(3) The child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030;

(4) The services ordered under RCW 13.34.130 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided;

(5) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(6) A guardianship, rather than termination of the parent-child relationship or continuation of efforts to return the child to the custody of the parent, would be in the best interest of the child. [1994 c 288 § 6; 1981 c 195 § 2.]

13.34.232 Guardianship for dependent child—Order, contents—Rights and duties of dependency guardian. (1) If the court has made a finding under RCW 13.34.231, it shall enter an order establishing a dependency guardianship for the child. The order shall:

(a) Appoint a person or agency to serve as dependency guardian for the limited purpose of assisting the court to supervise the dependency;

(b) Specify the dependency guardian's rights and responsibilities concerning the care, custody, and control of the child. A dependency guardian shall not have the authority to consent to the child's adoption;

(c) Specify the dependency guardian's authority, if any, to receive, invest, and expend funds, benefits, or property belonging to the child;

(d) Specify an appropriate frequency of visitation between the parent and the child; and

(e) Specify the need for any continued involvement of the supervising agency and the nature of that involvement, if any.

(2) Unless the court specifies otherwise in the guardianship order, the dependency guardian shall maintain the physical custody of the child and have the following rights and duties:

(a) Protect, discipline, and educate the child;

(b) Provide food, clothing, shelter, education as required by law, and routine health care for the child;

(c) Consent to necessary health and surgical care and sign a release of health care information to appropriate authorities, pursuant to law;

(d) Consent to social and school activities of the child; and

(e) Provide an annual written accounting to the court regarding receipt by the dependency guardian of any funds, benefits, or property belonging to the child and expenditures made therefrom.

(3) As used in this section, the term "health care" includes, but is not limited to, medical, dental, psychological, and psychiatric care and treatment.

(4) The child shall remain dependent for the duration of the guardianship. While the guardianship remains in effect, the dependency guardian shall be a party to any dependency proceedings pertaining to the child.

(5) The guardianship shall remain in effect only until the child is eighteen years of age or until the court terminates the guardianship order, whichever occurs sooner. [1994 c 288 § 7; 1993 c 412 § 4; 1981 c 195 § 3.]

13.34.233 Guardianship for dependent child—Modification or termination of order—Hearing—Termination of guardianship. (1) Any party may request the court to modify or terminate a dependency guardianship order under RCW 13.34.150. Notice of any motion to modify or terminate the guardianship shall be served on all other parties, including any agency that was responsible for supervising the child's placement at the time the guardianship petition was filed. Notice shall in all cases be served upon the department of social and health services. If the department was not previously a party to the guardianship proceeding, the department shall nevertheless have the right to initiate a proceeding to modify or terminate a guardian-

ship and the right to intervene at any stage of such a proceeding.

(2) The guardianship may be modified or terminated upon the motion of any party or the department if the court finds by a preponderance of the evidence that there has been a substantial change of circumstances subsequent to the establishment of the guardianship and that it is in the child's best interest to modify or terminate the guardianship. The court shall hold a hearing on the motion before modifying or terminating a guardianship.

(3) Upon entry of an order terminating the guardianship, the dependency guardian shall not have any rights or responsibilities with respect to the child and shall not have legal standing to participate as a party in further dependency proceedings pertaining to the child. The court may allow the child's dependency guardian to attend dependency review proceedings pertaining to the child for the sole purpose of providing information about the child to the court.

(4) Upon entry of an order terminating the guardianship, the child shall remain dependent and the court shall either return the child to the child's parent or order the child into the custody, control, and care of the department of social and health services or a licensed child-placing agency for placement in a foster home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to such chapter. The court shall not place a child in the custody of the child's parent unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists and that such placement is in the child's best interest. The court shall thereafter conduct reviews as provided in *RCW 13.34.130(5) and, where applicable, shall hold a permanency planning hearing in accordance with RCW 13.34.145. [1995 c 311 § 24; 1994 c 288 § 8; 1981 c 195 § 4.]

*Reviser's note: RCW 13.34.130 was amended by 1998 c 314 § 2, changing subsection (5) to subsection (7).

13.34.234 Guardianship for dependent child—Dependency guardian may receive foster care payments. Establishment of a dependency guardianship under RCW 13.34.231 and 13.34.232 does not preclude the dependency guardian from receiving foster care payments. [1994 c 288 § 9; 1981 c 195 § 5.]

13.34.235 Guardianship for dependent child—Review hearing requirements not applicable. A guardianship established under RCW 13.34.231 and 13.34.232 is not subject to the review hearing requirements of RCW 13.34.130. [1981 c 195 § 6.]

13.34.236 Guardianship for dependent child—Qualifications for dependency guardian—Consideration of preferences of parent. (1) Any person over the age of twenty-one years who is not otherwise disqualified by this section, any nonprofit corporation, or any Indian tribe may be appointed the dependency guardian of a child under RCW 13.34.232. No person is qualified to serve as a dependency guardian unless the person meets the minimum requirements to care for children as provided in RCW 74.15.030.

(2) If the preferences of a child's parent were not considered under RCW 13.34.260 as they relate to the

proposed dependency guardian, the court shall consider such preferences before appointing the dependency guardian. [1994 c 288 § 10; 1981 c 195 § 7.]

13.34.240 Acts, records, and proceedings of Indian tribe or band given full faith and credit. The courts of this state shall give full faith and credit as provided for in the United States Constitution to the public acts, records, and judicial proceedings of any Indian tribe or band in any proceeding brought pursuant to this chapter to the same extent that full faith and credit is given to the public acts, records, and judicial proceedings of any other state. [1979 c 155 § 52.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.245 Voluntary consent to foster care placement for Indian child—Validation—Withdrawal of consent—Termination. (1) Where any parent or Indian custodian voluntarily consents to foster care placement of an Indian child and a petition for dependency has not been filed regarding the child, such consent shall not be valid unless executed in writing before the court and filed with the court. The consent shall be accompanied by the written certification of the court that the terms and consequences of the consent were fully explained in detail to the parent or Indian custodian during the court proceeding and were fully understood by the parent or Indian custodian. The court shall also certify in writing either that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) To obtain court validation of a voluntary consent to foster care placement, any person may file a petition for validation alleging that there is located or residing within the county an Indian child whose parent or Indian custodian wishes to voluntarily consent to foster care placement of the child and requesting that the court validate the consent as provided in this section. The petition shall contain the name, date of birth, and residence of the child, the names and residences of the consenting parent or Indian custodian, and the name and location of the Indian tribe in which the child is a member or eligible for membership. The petition shall state whether the placement preferences of 25 U.S.C. Sec. 1915 (b) or (c) will be followed. Reasonable attempts shall be made by the petitioner to ascertain and set forth in the petition the identity, location, and custodial status of any parent or Indian custodian who has not consented to foster care placement and why that parent or Indian custodian cannot assume custody of the child.

(3) Upon filing of the petition for validation, the clerk of the court shall schedule the petition for a hearing on the court validation of the voluntary consent no later than forty-eight hours after the petition has been filed, excluding Saturdays, Sundays, and holidays. Notification of time, date, location, and purpose of the validation hearing shall be provided as soon as possible to the consenting parent or Indian custodian, the department or other child-placing agency which is to assume responsibility for the child's placement and care pursuant to the consent to foster care

placement, and the Indian tribe in which the child is enrolled or eligible for enrollment as a member. If the identity and location of any nonconsenting parent or Indian custodian is known, reasonable attempts shall be made to notify the parent or Indian custodian of the consent to placement and the validation hearing. Notification under this subsection may be given by the most expedient means, including, but not limited to, mail, personal service, telephone, and telegraph.

(4) Any parent or Indian custodian may withdraw consent to a voluntary foster care placement, made under this section, at any time. Unless the Indian child has been taken in custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130, the Indian child shall be returned to the parent or Indian custodian upon withdrawal of consent to foster care placement of the child.

(5) Upon termination of the voluntary foster care placement and return of the child to the parent or Indian custodian, the department or other child-placing agency which had assumed responsibility for the child's placement and care pursuant to the consent to foster care placement shall file with the court written notification of the child's return and shall also send such notification to the Indian tribe in which the child is enrolled or eligible for enrollment as a member and to any other party to the validation proceeding including any noncustodial parent. [1997 c 386 § 18; 1987 c 170 § 2.]

Application—1997 c 386: See note following RCW 74.14D.010.

Severability—1987 c 170: See note following RCW 13.04.030.

13.34.250 Preference characteristics when placing Indian child in foster care home. Whenever appropriate, an Indian child shall be placed in a foster care home with the following characteristics which shall be given preference in the following order:

- (1) Relatives;
- (2) An Indian family of the same tribe as the child;
- (3) An Indian family of a Washington Indian tribe of a similar culture to that tribe;
- (4) Any other family which can provide a suitable home for an Indian child, such suitability to be determined through consultation with a local Indian child welfare advisory committee. [1979 c 155 § 53.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.260 Foster home placement—Parental preferences. In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child. Preferences such as family constellation, ethnicity, and religion shall be given consideration when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and should be integrated through the foster care team. [1990 c 284 § 25.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

13.34.270 Developmentally disabled children—Out-of-home placement—Permanency planning hearing. (1) Whenever the department of social and health services places a developmentally disabled child in out-of-home care pursuant to RCW 74.13.350, the department shall obtain a judicial determination within one hundred eighty days of the placement that continued placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination is required.

(2) To obtain the judicial determination, the department shall file a petition alleging that there is located or residing within the county a child who has a developmental disability, as defined in RCW 71A.10.020, and that the child has been placed in out-of-home care pursuant to RCW 74.13.350. The petition shall request that the court review the child's placement, make a determination that continued placement is in the best interests of the child, and take other necessary action as provided in this section. The petition shall contain the name, date of birth, and residence of the child and the names and residences of the child's parent or legal guardian who has agreed to the child's placement in out-of-home care. Reasonable attempts shall be made by the department to ascertain and set forth in the petition the identity, location, and custodial status of any parent who is not a party to the placement agreement and why that parent cannot assume custody of the child.

(3) Upon filing of the petition, the clerk of the court shall schedule the petition for a hearing to be held no later than fourteen calendar days after the petition has been filed. The department shall provide notification of the time, date, and purpose of the hearing to the parent or legal guardian who has agreed to the child's placement in out-of-home care. The department shall also make reasonable attempts to notify any parent who is not a party to the placement agreement, if the parent's identity and location is known. Notification under this section may be given by the most expedient means, including but not limited to, mail, personal service, telephone, and telegraph.

(4) The court shall appoint a guardian ad litem for the child as provided in RCW 13.34.100, unless the court for good cause finds the appointment unnecessary.

(5) Permanency planning hearings shall be held as provided in this subsection. At the hearing, the court shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

(a) For children age ten and under, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the child's current placement episode.

(b) For children over age ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.

(c) No later than ten working days before the permanency planning hearing, the department shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties. The plan shall be directed toward securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent or legal guardian; adoption; guardianship; or long-term out-of-home care, until the child is age eighteen, with a written agreement between the parties and the child's care provider.

(d) If a goal of long-term out-of-home care has been achieved before the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remains appropriate. In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal.

(e) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the voluntary placement agreement is terminated.

(6) Any party to the voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian, unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The department shall notify the court upon termination of the voluntary placement agreement and return of the child to the care of the child's parent or legal guardian. Whenever a voluntary placement agreement is terminated, an action under this section shall be dismissed.

(7) This section does not prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030. An action filed under this section shall be dismissed upon the filing of a dependency petition regarding a child who is the subject of the action under this section. [1998 c 229 § 2; 1997 c 386 § 19.]

Application—1997 c 386: See note following RCW 74.14D.010.

13.34.300 Failure to cause juvenile to attend school as evidence under neglect petition. The legislature finds that it is the responsibility of the custodial parent, parents or guardian to ensure that children within the custody of such individuals attend school as provided for by law. To this end, while a parent's failure to cause a juvenile to attend school should not alone provide a basis for a neglect petition against the parent or guardian, when a neglect petition is filed on the basis of other evidence, a parent or guardian's failure to take reasonable steps to ensure that the juvenile attends school may be used as evidence with respect to the question of the appropriate disposition of a neglect petition. [1979 ex.s. c 201 § 3.]

13.34.800 Drug-affected and alcohol-affected infants—Model project. (*Effective January 1, 1999.*) To the extent funds are appropriated, the department shall operate a model project to provide services to women who give birth to infants exposed to the nonprescription use of controlled substances or abuse of alcohol by the mother during pregnancy. Within available funds, the project may be offered in one site in each of the three department's administrative regions that have the highest incidence of drug-affected or alcohol-affected infants annually. The project shall accept women referred to it by the department following the birth of a drug-affected or alcohol-affected infant. The model project shall be concluded by July 1, 2002. [1998 c 314 § 30.]

Effective date—1998 c 314: "Sections 18 through 24, 26 through 28, 30 through 39, and 41 through 44 of this act take effect January 1, 1999." [1998 c 314 § 46.]

13.34.801 Rules—Definition of "drug-affected infant." By July 1, 1999, the department of social and health services, in consultation with the department of health, shall adopt rules to implement chapter 314, Laws of 1998, including a definition of "drug-affected infant," which shall be limited to infants who are affected by a mother's nonprescription use of controlled substances. [1998 c 314 § 25.]

13.34.802 Rules—Definition of "alcohol-affected infant." By July 1, 1999, the department of social and health services, in consultation with the department of health, shall adopt rules to implement chapter 314, Laws of 1998, including a definition of "alcohol-affected infant," which shall be limited to infants who are affected by a mother's abuse of alcohol. [1998 c 314 § 29.]

13.34.803 Drug-affected and alcohol-affected infants—Comprehensive plan—Report. (1) The departments of health and social and health services shall develop a comprehensive plan for providing services to mothers who (a) have delivered a drug or alcohol exposed or affected infant, and (b) meet the definition of at-risk eligible persons in RCW 74.09.790 and who have a child up to three years of age. The services to be provided by the plan will include those defined in RCW 74.09.790. The plan shall provide for the coordination of services through community-based programs and among: (i) The departments; (ii) the departments' divisions; and (iii) other state agencies. The plan shall include recommendations to the legislature for implementing the plan and any alternative methods for addressing the needs of these mothers and their children.

(2) In developing the plan, the department of health shall inventory the community-based programs that may be accessed to provide services to these mothers and their children; evaluate implementing services for these mothers through extension of the maternity care access system; and evaluate the fiscal impact of the plan. In performing the fiscal evaluation, the department shall calculate potential long-term cost savings to the state resulting from reduced use of the medical, juvenile justice, public assistance, and dependency systems by children and mothers receiving services under the plan.

(3) The department shall submit a report describing the plan to the appropriate committees of the house of representatives and senate by November 1, 1998. [1998 c 314 § 40.]

13.34.805 Drug-affected infants—Study. (*Effective January 1, 1999.*) To the extent funds are appropriated, the institute for public policy shall study the cost-effectiveness of chapter 314, Laws of 1998 and report to the governor and legislature not later than January 1, 2002. The study shall measure the reduction in the birth rate of drug-affected infants among women and shall compare the reduction with the rate of birth of drug-affected infants born to women referred to chemical dependency treatment programs. The study shall identify the factors that promote or discourage the ability of women to avoid giving birth to drug-affected infants. [1998 c 314 § 31.]

Effective date—1998 c 314: See note following RCW 13.34.800.

13.34.8051 Drug-affected infants—Study—Alcohol-affected infants to be included. (*Effective January 1, 1999.*) To the extent funds are appropriated, the institute for public policy study referenced in RCW 13.34.805 shall include alcohol-affected births. [1998 c 314 § 32.]

Effective date—1998 c 314: See note following RCW 13.34.800.

13.34.810 Implementation of chapter 314, Laws of 1998. The department of community, trade, and economic development shall contract with The Evergreen State College for completion of the study by the Washington institute for public policy ordered pursuant to sections 14 through 16, chapter 314, Laws of 1998. The department of community, trade, and economic development shall contract with the department of social and health services for the purpose of implementing *sections 18 through 44, chapter 314, Laws of 1998. No funds for administrative expenses may be deducted by the department of community, trade, and economic development prior to allocation as provided in this section. [1998 c 314 § 48.]

***Reviser's note:** Sections 18 through 24, 26 through 28, and 39 of this act were vetoed by the governor.

Chapter 13.40

JUVENILE JUSTICE ACT OF 1977

Sections	
13.40.005	Juvenile disposition standards commission—Abolished—References to commission—Transfer of powers, duties, and functions.
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13.40.020	Definitions.
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- 13.40.510 Community juvenile accountability programs—Establishment—Proposals—Guidelines.
- 13.40.520 Community juvenile accountability programs—Grants.
- 13.40.530 Community juvenile accountability programs—Effectiveness standards.
- 13.40.540 Community juvenile accountability programs—Information collection—Report.
- 13.40.550 Community juvenile accountability programs—Short title.

1977 ex.s. c 291: "(1) There is appropriated for the period July 1, 1978, to June 30, 1979, from the general fund nine hundred eighty-three thousand six hundred dollars to be allocated to counties for the cost of operating diversion units as required by this chapter.

(2) The secretary shall administer the funds and shall promulgate, pursuant to chapter 34.04 RCW, rules establishing a planning process and standards which meet the intent of this chapter. The secretary shall also monitor and evaluate, against established standards, all programs and services funded by this appropriation.

(3) The total sum shall be allocated by the secretary to the counties. Diversion units funded by this section shall be administered and operated separately from the court: **PROVIDED**, That counties of classes other than AA and A may request for an exemption from this requirement. The secretary may grant such exemption if it is clearly demonstrated that resources do not exist nor can be established in such county to operate diversion units separately from the court.

(4) In meeting the requirements of this chapter, there shall be a maintenance of effort whereby counties shall exhaust existing resources prior to the utilization of funds appropriated by this section.

(5) It is the intent of the legislature that these funds shall be the maximum amount necessary to meet the requirement of this chapter for the stated period. Courts shall be required to provide diversion programs and services to the extent made possible by available sources. In addressing diverted youths, a resource priority continuum shall be developed whereby the highest priority in resource allocation shall be given to diverted youths who have inflicted bodily harm while the lowest priority shall be given to diverting youths who have committed victimless crimes or minor property offenses." [1977 ex.s. c 291 § 79.]

Health and dental examination and care for juveniles in detention facility—Consent: RCW 13.04.047.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Treatment of juvenile offenders: RCW 74.14A.030, 74.14A.040.

13.40.005 Juvenile disposition standards commission—Abolished—References to commission—Transfer of powers, duties, and functions. (1) The juvenile disposition standards commission is hereby abolished and its powers, duties, and functions are hereby transferred to the sentencing

guidelines commission. All references to the director or the juvenile disposition standards commission in the Revised Code of Washington shall be construed to mean the director or the sentencing guidelines commission.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the juvenile disposition standards commission shall be delivered to the custody of the sentencing guidelines commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the juvenile disposition standards commission shall be made available to the sentencing guidelines commission. All funds, credits, or other assets held by the juvenile disposition standards commission shall be assigned to the sentencing guidelines commission.

(b) Any appropriations made to the juvenile disposition standards commission shall, on June 30, 1997, be transferred and credited to the sentencing guidelines commission.

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

(3) All employees of the juvenile disposition standards commission are transferred to the jurisdiction of the sentencing guidelines commission. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the sentencing guidelines commission to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the juvenile disposition standards commission shall be continued and acted upon by the sentencing guidelines commission. All existing contracts and obligations shall remain in full force and shall be performed by the sentencing guidelines commission.

(5) The transfer of the powers, duties, functions, and personnel of the juvenile disposition standards commission shall not affect the validity of any act performed before June 30, 1997.

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

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law. [1995 c 269 § 301.]

Reviser's note: 1995 c 269 directed that this section be added to chapter 9.94A RCW. This section has been codified in chapter 13.40 RCW, which relates more directly to the juvenile disposition standards commission.

Effective date—1995 c 269 § 301: "Section 301 of this act shall take effect June 30, 1996." [1996 c 232 § 8; 1995 c 269 § 3603.]

Part headings not law—1995 c 269: "Part headings as used in this act do not constitute any part of the law." [1995 c 269 § 3601.]

Severability—1995 c 269: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 269 § 3602.]

13.40.010 Short title—Intent—Purpose. (1) This chapter shall be known and cited as the Juvenile Justice Act of 1977.

(2) It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders, as defined by this chapter, be established. It is the further intent of the legislature that youth, in turn, be held accountable for their offenses and that communities, families, and the juvenile courts carry out their functions consistent with this intent. To effectuate these policies, the legislature declares the following to be equally important purposes of this chapter:

- (a) Protect the citizenry from criminal behavior;
- (b) Provide for determining whether accused juveniles have committed offenses as defined by this chapter;
- (c) Make the juvenile offender accountable for his or her criminal behavior;
- (d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender;
- (e) Provide due process for juveniles alleged to have committed an offense;
- (f) Provide necessary treatment, supervision, and custody for juvenile offenders;
- (g) Provide for the handling of juvenile offenders by communities whenever consistent with public safety;
- (h) Provide for restitution to victims of crime;
- (i) Develop effective standards and goals for the operation, funding, and evaluation of all components of the juvenile justice system and related services at the state and local levels;
- (j) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both, and to determine the jurisdictional limitations of the courts, institutions, and community services; and
- (k) Encourage the parents, guardian, or custodian of the juvenile to actively participate in the juvenile justice process. [1997 c 338 § 8; 1992 c 205 § 101; 1977 ex.s. c 291 § 55.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Part headings not law—1992 c 205: "Part headings as used in this act do not constitute any part of the law." [1992 c 205 § 405.]

Severability—1992 c 205: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 205 § 406.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.020 Definitions. For the purposes of this chapter:

- (1) "Community-based rehabilitation" means one or more of the following: Employment; attendance of information classes; literacy classes; counseling, outpatient substance

abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district. Placement in community-based rehabilitation programs is subject to available funds;

(2) Community-based sanctions may include one or more of the following:

(a) A fine, not to exceed five hundred dollars;

(b) Community service not to exceed one hundred fifty hours of service;

(3) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense. Community service may be performed through public or private organizations or through work crews;

(4) "Community supervision" means an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition. A community supervision order for a single offense may be for a period of up to two years for a sex offense as defined by RCW 9.94A.030 and up to one year for other offenses. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision, the court shall order the juvenile to comply with the mandatory school attendance provisions of chapter 28A.225 RCW and to inform the school of the existence of this requirement. Community supervision is an individualized program comprised of one or more of the following:

(a) Community-based sanctions;

(b) Community-based rehabilitation;

(c) Monitoring and reporting requirements;

(d) Posting of a probation bond;

(5) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The county may operate or contract with vendors to operate county detention facilities. The department may operate or contract to operate detention facilities for juveniles committed to the department. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(6) "Court," when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(7) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the

respondent's criminal history. A successfully completed deferred adjudication that was entered before July 1, 1998, or a deferred disposition shall not be considered part of the respondent's criminal history;

(8) "Department" means the department of social and health services;

(9) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring;

(10) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender, or any other person, community accountability board, or other entity except a law enforcement official or entity, with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.40.080, or any person, community accountability board, or other entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter. For purposes of this subsection, "community accountability board" means a board comprised of members of the local community in which the juvenile offender resides. The superior court shall appoint the members. The boards shall consist of at least three and not more than seven members. If possible, the board should include a variety of representatives from the community, such as a law enforcement officer, teacher or school administrator, high school student, parent, and business owner, and should represent the cultural diversity of the local community;

(11) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(12) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(13) "Intensive supervision program" means a parole program that requires intensive supervision and monitoring, offers an array of individualized treatment and transitional services, and emphasizes community involvement and support in order to reduce the likelihood a juvenile offender will commit further offenses;

(14) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court pursuant to RCW 13.40.110 or who is otherwise under adult court jurisdiction;

(15) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(16) "Local sanctions" means one or more of the following: (a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community service; or (d) \$0-\$500 fine;

(17) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would

impose a serious, and clear danger to society in light of the purposes of this chapter;

(18) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions or limitations as the court may require which may not include confinement;

(19) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

(20) "Probation bond" means a bond, posted with sufficient security by a surety justified and approved by the court, to secure the offender's appearance at required court proceedings and compliance with court-ordered community supervision or conditions of release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of cash or posting of other collateral in lieu of a bond if approved by the court;

(21) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(22) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense if the offense is a sex offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(23) "Secretary" means the secretary of the department of social and health services. "Assistant secretary" means the assistant secretary for juvenile rehabilitation for the department;

(24) "Services" means services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(25) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

(26) "Sexual motivation" means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification;

(27) "Surety" means an entity licensed under state insurance laws or by the state department of licensing, to write corporate, property, or probation bonds within the state, and justified and approved by the superior court of the county having jurisdiction of the case;

(28) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration;

(29) "Violent offense" means a violent offense as defined in RCW 9.94A.030. [1997 c 338 § 10; (1997 c 338 § 9 expired July 1, 1998). Prior: 1995 c 395 § 2; 1995 c

(1998 Ed.)

134 § 1; prior: 1994 sp.s. c 7 § 520; 1994 c 271 § 803; 1994 c 261 § 18; 1993 c 373 § 1; 1990 1st ex.s. c 12 § 1; 1990 c 3 § 301; 1989 c 407 § 1; 1988 c 145 § 17; 1983 c 191 § 7; 1981 c 299 § 2; 1979 c 155 § 54; 1977 ex.s. c 291 § 56.]

Alphabetization of definitions—1997 c 338: "The code reviser shall alphabetize the definitions in RCW 13.40.020 and correct any references." [1997 c 338 § 71.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Finding—Intent—1994 c 261: See note following RCW 16.52.011

Severability—1993 c 373: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 373 § 3.]

Effective date—1990 1st ex.s. c 12: "This act shall take effect July 1, 1990." [1990 1st ex.s. c 12 § 5.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.030 Security guidelines—Legislative review.

(1) The secretary shall submit guidelines pertaining to the nature of the security to be imposed on youth placed in his or her custody based on the age, offense(s), and criminal history of the juvenile offender. Such guidelines shall be submitted to the legislature for its review no later than November 1st of each year. At the same time the secretary shall submit a report on security at juvenile facilities during the preceding year. The report shall include the number of escapes from each juvenile facility, the most serious offense for which each escapee had been confined, the number and nature of offenses found to have been committed by juveniles while on escape status, the number of authorized leaves granted, the number of failures to comply with leave requirements, the number and nature of offenses committed while on leave, and the number and nature of offenses committed by juveniles while in the community on minimum security status; to the extent this information is available to the secretary. The department shall include security status definitions in the security guidelines it submits to the legislature pursuant to this section.

(2) The permissible ranges of confinement resulting from a finding of manifest injustice under RCW 13.40.0357 are subject to the following limitations:

(a) Where the maximum term in the range is ninety days or less, the minimum term in the range may be no less than fifty percent of the maximum term in the range;

(b) Where the maximum term in the range is greater than ninety days but not greater than one year, the minimum term in the range may be no less than seventy-five percent of the maximum term in the range; and

(c) Where the maximum term in the range is more than one year, the minimum term in the range may be no less than eighty percent of the maximum term in the range. [1996 c 232 § 5; 1989 c 407 § 3; 1985 c 73 § 1; 1983 c 191 § 6; 1981 c 299 § 5; 1979 c 155 § 55; 1977 ex.s. c 291 § 57.]

Effective dates—1996 c 232: See note following RCW 9.94A.040.

Legislative ratification—1989 c 271: "The legislature ratifies the juvenile disposition standards commission guidelines submitted to the 1989 legislature and endorses the action to increase penalties for juvenile drug offenders." [1989 c 271 § 602.]

Effective date—1985 c 73: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 73 § 3.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005

13.40.0351 Equal application of guidelines and standards. The sentencing guidelines and prosecuting standards apply equally to juvenile offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the offender. [1989 c 407 § 5.]

13.40.0357 Juvenile offender sentencing standards.

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
Arson and Malicious Mischief		
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (<\$50 is E class) (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
A	Possession of Incendiary Device (9.40.120)	B+
Assault and Other Crimes Involving Physical Harm		
A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E

C+	Custodial Assault (9A.36.100)	D+
Burglary and Trespass		
B+	Burglary 1 (9A.52.020)	C+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E
Drugs		
E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030)	D+
E	Possession of Legend Drug (69.41.030)	E
B+	Violation of Uniform Controlled Substances Act Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(a)(1) (i) or (ii))	B+
C	Violation of Uniform Controlled Substances Act Nonnarcotic Sale (69.50.401(a)(1)(iii))	C
E	Possession of Marihuana <40 grams (69.50.401(e))	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C
C+	Sale of Controlled Substance for Profit (69.50.410)	C+
E	Unlawful Inhalation (9.47A.020)	E
B	Violation of Uniform Controlled Substances Act Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.401(b)(1) (i) or (ii))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.401(b)(1) (iii), (iv), (v))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(d))	C
C	Violation of Uniform Controlled Substances Act Possession of a Controlled Substance (69.50.401(c))	C
Firearms and Weapons		
B	Theft of Firearm (9A.56.300)	C
B	Possession of Stolen Firearm (9A.56.310)	C
E	Carrying Loaded Pistol Without Permit (9.41.050)	E

C	Possession of Firearms by Minor (<18) (9.41.040(1)(b)(iii))	C	C	Theft 2 (9A.56.040)	D
D+	Possession of Dangerous Weapon (9.41.250)	E	D	Theft 3 (9A.56.050)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E	B	Theft of Livestock (9A.56.080)	C
	Homicide		C	Forgery (9A.60.020)	D
A+	Murder 1 (9A.32.030)	A	A	Robbery 1 (9A.56.200)	B+
A+	Murder 2 (9A.32.050)	B+	B+	Robbery 2 (9A.56.210)	C+
B+	Manslaughter 1 (9A.32.060)	C+	B+	Extortion 1 (9A.56.120)	C+
C+	Manslaughter 2 (9A.32.070)	D+	C+	Extortion 2 (9A.56.130)	D+
B+	Vehicular Homicide (46.61.520)	C+	B	Possession of Stolen Property 1 (9A.56.150)	C
	Kidnapping		C	Possession of Stolen Property 2 (9A.56.160)	D
A	Kidnap 1 (9A.40.020)	B+	D	Possession of Stolen Property 3 (9A.56.170)	E
B+	Kidnap 2 (9A.40.030)	C+	C	Taking Motor Vehicle Without Owner's Permission (9A.56.070)	D
C+	Unlawful Imprisonment (9A.40.040)	D+		Motor Vehicle Related Crimes	
	Obstructing Governmental Operation		E	Driving Without a License (46.20.005)	E
D	Obstructing a Law Enforcement Officer (9A.76.020)	E	C	Hit and Run Injury (46.52.020(4))	D
E	Resisting Arrest (9A.76.040)	E	D	Hit and Run-Attended (46.52.020(5))	E
B	Introducing Contraband 1 (9A.76.140)	C	E	Hit and Run-Unattended (46.52.010)	E
C	Introducing Contraband 2 (9A.76.150)	D	C	Vehicular Assault (46.61.522)	D
E	Introducing Contraband 3 (9A.76.160)	E	C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
B+	Intimidating a Public Servant (9A.76.180)	C+	E	Reckless Driving (46.61.500)	E
B+	Intimidating a Witness (9A.72.110)	C+	D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
	Public Disturbance			Other	
C+	Riot with Weapon (9A.84.010)	D+	B	Bomb Threat (9.61.160)	C
D+	Riot Without Weapon (9A.84.010)	E	C	Escape 1 ¹ (9A.76.110)	C
E	Failure to Disperse (9A.84.020)	E	C	Escape 2 ¹ (9A.76.120)	C
E	Disorderly Conduct (9A.84.030)	E	D	Escape 3 (9A.76.130)	E
	Sex Crimes		E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Rape 1 (9A.44.040)	B+	A	Other Offense Equivalent to an Adult Class A Felony	B+
A-	Rape 2 (9A.44.050)	B+	B	Other Offense Equivalent to an Adult Class B Felony	C
C+	Rape 3 (9A.44.060)	D+	C	Other Offense Equivalent to an Adult Class C Felony	D
A-	Rape of a Child 1 (9A.44.073)	B+	D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
B+	Rape of a Child 2 (9A.44.076)	C+	E	Other Offense Equivalent to an Adult Misdemeanor	E
B	Incest 1 (9A.64.020(1))	C	V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V
C	Incest 2 (9A.64.020(2))	D			
D+	Indecent Exposure (Victim <14) (9A.88.010)	E			
E	Indecent Exposure (Victim 14 or over) (9A.88.010)	E			
B+	Promoting Prostitution 1 (9A.88.070)	C+			
C+	Promoting Prostitution 2 (9A.88.080)	D+			
E	O & A (Prostitution) (9A.88.030)	E			
B+	Indecent Liberties (9A.44.100)	C+			
A-	Child Molestation 1 (9A.44.083)	B+			
B	Child Molestation 2 (9A.44.086)	C+			
	Theft, Robbery, Extortion, and Forgery				
B	Theft 1 (9A.56.030)	C			

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

- 1st escape or attempted escape during 12-month period
4 weeks confinement
- 2nd escape or attempted escape during 12-month period
8 weeks confinement
- 3rd and subsequent escape or attempted escape during 12-month period
12 weeks confinement

If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, or C.

**OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE**

	A+	180 WEEKS TO AGE 21 YEARS					
	A	103 WEEKS TO 129 WEEKS					
	A-	15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	152-65 WEEKS	180-100 WEEKS	1103-129 WEEKS		
Current Offense Category	B+	15-36 WEEKS	152-65 WEEKS	180-100 WEEKS	1103-129 WEEKS		
	B	LOCAL SANCTIONS (LS)	115-36 WEEKS		152-65 WEEKS		
	C+	LS		115-36 WEEKS			
	C	LS			115-36 WEEKS		
	D+	LS	Local Sanctions: 0 to 30 Days 0 to 12 Months Community Supervision 0 to 150 Hours Community Service				
	D	LS	\$0 to \$500 Fine				
	E	LS					
			0	1	2	3	4 or more
			PRIOR ADJUDICATIONS				

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

**OPTION B
CHEMICAL DEPENDENCY
DISPOSITION ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confine-

ment and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(5) and 13.40.165.

OR

**OPTION C
MANIFEST INJUSTICE**

If the court determines that a disposition under option A or B would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2). [1998 c 290 § 5. Prior: 1997 c 338 § 12; (1997 c 338 § 11 expired July 1, 1998); 1997 c 66 § 6; 1996 c 205 § 6; 1995 c 395 § 3; 1994 sp.s. c 7 § 522; 1989 c 407 § 7.]

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Evaluation—Report—1997 c 338: "The legislature finds it critical to evaluate the effectiveness of the revisions made in this act to juvenile sentencing for purposes of measuring improvements in public safety and reduction of recidivism.

To accomplish this evaluation, the Washington state institute for public policy shall conduct a study of the sentencing revisions. The study shall: (1) Be conducted starting January 1, 2001; (2) examine whether the revisions have affected the rate of initial offense commission and recidivism; (3) determine the impacts of the revisions by age, race, and gender impacts of the revisions; (4) compare the utilization and effectiveness of sentencing alternatives and manifest injustice determinations before and after the revisions; and (5) examine the impact and effectiveness of changes made in the exclusive original jurisdiction of juvenile court over juvenile offenders.

The institute shall report the results of the study to the governor and legislature not later than July 1, 2002." [1997 c 338 § 59.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.038 County juvenile detention facilities—Policy—Detention and risk assessment standards. It is the policy of this state that all county juvenile detention facilities provide a humane, safe, and rehabilitative environment and that unadjudicated youth remain in the community whenever possible, consistent with public safety and the provisions of chapter 13.40 RCW.

The counties shall develop and implement detention intake standards and risk assessment standards to determine whether detention is warranted and if so whether the juvenile should be placed in secure, nonsecure, or home detention to implement the goals of this section. Inability to pay for a less restrictive detention placement shall not be a basis for denying a respondent a less restrictive placement in the community. The detention and risk assessment standards shall be developed and implemented no later than December 31, 1992. [1992 c 205 § 105; 1986 c 288 § 7.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Severability—1986 c 288: See note following RCW 13.32A.050.

13.40.040 Taking juvenile into custody, grounds—Detention of, grounds—Release on bond, conditions—Bail jumping. (1) A juvenile may be taken into custody:

(a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to

believe, that the juvenile has committed an offense or has violated terms of a disposition order or release order; or

(b) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection (2) of this section; or

(c) Pursuant to a court order that the juvenile be held as a material witness; or

(d) Where the secretary or the secretary's designee has suspended the parole of a juvenile offender.

(2) A juvenile may not be held in detention unless there is probable cause to believe that:

(a) The juvenile has committed an offense or has violated the terms of a disposition order; and

(i) The juvenile will likely fail to appear for further proceedings; or

(ii) Detention is required to protect the juvenile from himself or herself; or

(iii) The juvenile is a threat to community safety; or

(iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or

(v) The juvenile has committed a crime while another case was pending; or

(b) The juvenile is a fugitive from justice; or

(c) The juvenile's parole has been suspended or modified; or

(d) The juvenile is a material witness.

(3) Upon a finding that members of the community have threatened the health of a juvenile taken into custody, at the juvenile's request the court may order continued detention pending further order of the court.

(4) A juvenile detained under this section may be released upon posting a probation bond set by the court. The juvenile's parent or guardian may sign for the probation bond. A court authorizing such a release shall issue an order containing a statement of conditions imposed upon the juvenile and shall set the date of his or her next court appearance. The court shall advise the juvenile of any conditions specified in the order and may at any time amend such an order in order to impose additional or different conditions of release upon the juvenile or to return the juvenile to custody for failing to conform to the conditions imposed. In addition to requiring the juvenile to appear at the next court date, the court may condition the probation bond on the juvenile's compliance with conditions of release. The juvenile's parent or guardian may notify the court that the juvenile has failed to conform to the conditions of release or the provisions in the probation bond. If the parent notifies the court of the juvenile's failure to comply with the probation bond, the court shall notify the surety. As provided in the terms of the bond, the surety shall provide notice to the court of the offender's noncompliance. A juvenile may be released only to a responsible adult or the department of social and health services. Failure to appear on the date scheduled by the court pursuant to this section shall constitute the crime of bail jumping. [1997 c 338 § 13; 1995 c 395 § 4; 1979 c 155 § 57; 1977 ex.s. c 291 § 58.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.045 Escapees—Arrest warrants. The secretary, assistant secretary, or the secretary's designee shall issue arrest warrants for juveniles who escape from department residential custody. The secretary, assistant secretary, or the secretary's designee may issue arrest warrants for juveniles who abscond from parole supervision or fail to meet conditions of parole. These arrest warrants shall authorize any law enforcement, probation and parole, or peace officer of this state, or any other state where the juvenile is located, to arrest the juvenile and to place the juvenile in physical custody pending the juvenile's return to confinement in a state juvenile rehabilitation facility. [1997 c 338 § 14; 1994 sp.s. c 7 § 518.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.050 Detention procedures—Notice of hearing—Conditions of release—Consultation with parent, guardian, or custodian. (1) When a juvenile taken into custody is held in detention:

(a) An information, a community supervision modification or termination of diversion petition, or a parole modification petition shall be filed within seventy-two hours, Saturdays, Sundays, and holidays excluded, or the juvenile shall be released; and

(b) A detention hearing, a community supervision modification or termination of diversion petition, or a parole modification petition shall be held within seventy-two hours, Saturdays, Sundays, and holidays excluded, from the time of filing the information or petition, to determine whether continued detention is necessary under RCW 13.40.040.

(2) Notice of the detention hearing, stating the time, place, and purpose of the hearing, stating the right to counsel, and requiring attendance shall be given to the parent, guardian, or custodian if such person can be found and shall also be given to the juvenile if over twelve years of age.

(3) At the commencement of the detention hearing, the court shall advise the parties of their rights under this chapter and shall appoint counsel as specified in this chapter.

(4) The court shall, based upon the allegations in the information, determine whether the case is properly before it or whether the case should be treated as a diversion case under RCW 13.40.080. If the case is not properly before the court the juvenile shall be ordered released.

(5) Notwithstanding a determination that the case is properly before the court and that probable cause exists, a juvenile shall at the detention hearing be ordered released on the juvenile's personal recognizance pending further hearing unless the court finds detention is necessary under RCW 13.40.040.

(6) If detention is not necessary under RCW 13.40.040, the court shall impose the most appropriate of the following

conditions or, if necessary, any combination of the following conditions:

(a) Place the juvenile in the custody of a designated person agreeing to supervise such juvenile;

(b) Place restrictions on the travel of the juvenile during the period of release;

(c) Require the juvenile to report regularly to and remain under the supervision of the juvenile court;

(d) Impose any condition other than detention deemed reasonably necessary to assure appearance as required;

(e) Require that the juvenile return to detention during specified hours; or

(f) Require the juvenile to post a probation bond set by the court under terms and conditions as provided in RCW 13.40.040(4).

(7) A juvenile may be released only to a responsible adult or the department.

(8) If the parent, guardian, or custodian of the juvenile in detention is available, the court shall consult with them prior to a determination to further detain or release the juvenile or treat the case as a diversion case under RCW 13.40.080.

(9) A person notified under this section who fails without reasonable cause to appear and abide by the order of the court may be proceeded against as for contempt of court. In determining whether a parent, guardian, or custodian had reasonable cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned. [1997 c 338 § 15; 1995 c 395 § 5; 1992 c 205 § 106; 1979 c 155 § 58; 1977 ex.s. c 291 § 59.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.054 Probation bond or collateral—Modification or revocation of probation bond. (1) As provided in this chapter, the court may order a juvenile to post a probation bond as defined in RCW 13.40.020 or to deposit cash or post other collateral in lieu of a probation bond, to enhance public safety, increase the likelihood that a respondent will appear as required to respond to charges, and increase compliance with community supervision imposed under various alternative disposition options. The parents or guardians of the juvenile may sign for a probation bond on behalf of the juvenile or deposit cash or other collateral in lieu of a bond if approved by the court.

(2) A parent or guardian who has signed for a probation bond, deposited cash, or posted other collateral on behalf of a juvenile has the right to notify the court if the juvenile violates any of the terms and conditions of the bond. The parent or guardian who signed for a probation bond may move the court to modify the terms of the bond or revoke the bond without penalty to the surety or parent. The court shall notify the surety if a parent or guardian notifies the court that the juvenile has violated conditions of the proba-

tion bond and has requested modification or revocation of the bond. At a hearing on the motion, the court may consider the nature and seriousness of the violation or violations and may either keep the bond in effect, modify the terms of the bond with the consent of the parent or guardian and surety, or revoke the bond. If the court revokes the bond the court may require full payment of the face amount of the bond. In the alternative, the court may revoke the bond and impose a partial payment for less than the full amount of the bond or may revoke the bond without imposing any penalty. In reaching its decision, the court may consider the timeliness of the parent's or guardian's notification to the court and the efforts of the parent and surety to monitor the offender's compliance with conditions of the bond and release. A surety shall have the same obligations and rights as provided sureties in adult criminal cases. Rules of forfeiture and revocation of bonds issued in adult criminal cases shall apply to forfeiture and revocation of probation bonds issued under this chapter except as specifically provided in this subsection. [1995 c 395 § 1.]

13.40.056 Nonrefundable bail fee. When a juvenile charged with an offense posts a probation bond or deposits cash or posts other collateral in lieu of a bond, ten dollars of the total amount required to be posted as bail shall be paid in cash as a nonrefundable bail fee. The bail fee shall be distributed to the county for costs associated with implementing chapter 395, Laws of 1995. [1995 c 395 § 9.]

13.40.060 Jurisdiction of actions—Transfer of case and records, when—Change in venue, grounds. (1) All actions under this chapter shall be commenced and tried in the county where any element of the offense was committed except as otherwise specially provided by statute. In cases in which diversion is provided by statute, venue is in the county in which the juvenile resides or in the county in which any element of the offense was committed.

(2) The case and copies of all legal and social documents pertaining thereto may in the discretion of the court be transferred to the county in which the juvenile resides for supervision and enforcement of the disposition order. The court of the receiving county has jurisdiction to modify and enforce the disposition order.

(3) The court upon motion of any party or upon its own motion may, at any time, transfer a proceeding to another juvenile court when there is reason to believe that an impartial proceeding cannot be held in the county in which the proceeding was begun. [1997 c 338 § 16; 1989 c 71 § 1; 1981 c 299 § 6; 1979 c 155 § 59; 1977 ex.s. c 291 § 60.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Effective date—1989 c 71: "This act shall take effect September 1, 1989." [1989 c 71 § 2.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.070 Complaints—Screening—Filing information—Diversion—Modification of community supervi-

sion—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs. (1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (7) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.440(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(1)(b)(iii); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has two or more diversion contracts on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (7) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the

length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(8) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(9) The responsibilities of the prosecutor under subsections (1) through (8) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(10) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims. [1997 c 338 § 17; 1994 sp.s. c 7 § 543; 1992 c 205 § 107; 1989 c 407 § 9; 1983 c 191 § 18; 1981 c 299 § 7; 1979 c 155 § 60; 1977 ex.s. c 291 § 61.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Application—1994 sp.s. c 7 §§ 540-545: See note following RCW 13.50.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.077 Recommended prosecuting standards for charging and plea dispositions.

RECOMMENDED PROSECUTING STANDARDS FOR CHARGING AND PLEA DISPOSITIONS

INTRODUCTION: These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.

Evidentiary sufficiency.

(1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law. The decision not to prosecute or divert shall not be influenced by the race, gender, religion, or creed of the suspect.

GUIDELINES/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) **Contrary to Legislative Intent** It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) **Antiquated Statute** - It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years;

(ii) Most members of society act as if it were no longer in existence;

(iii) It serves no deterrent or protective purpose in today's society; and

(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) **De Minimis Violation** It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) **Confinement on Other Charges** It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) **Pending Conviction on Another Charge** - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) **High Disproportionate Cost of Prosecution** It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. The reason should be limited to minor cases and should not be relied upon in serious cases.

(g) **Improper Motives of Complainant** - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law.

(h) **Immunity** It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) **Victim Request** - It may be proper to decline to charge because the victim requests that no criminal charges

be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be proved under RCW 13.40.160(4).

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

The categorization of crimes for these charging standards shall be the same as found in RCW 9.94A.440(2).

The decision to prosecute or use diversion shall not be influenced by the race, gender, religion, or creed of the respondent.

(3) Selection of Charges/Degree of Charge

(a) The prosecutor should file charges which adequately describe the nature of the respondent's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(i) Will significantly enhance the strength of the state's case at trial; or

(ii) Will result in restitution to all victims.

(b) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(i) Charging a higher degree;

(ii) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a respondent's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(4) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

- (a) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (b) The completion of necessary laboratory tests; and
- (c) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(5) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

- (a) Probable cause exists to believe the suspect is guilty; and
- (b) The suspect presents a danger to the community or is likely to flee if not apprehended; or
- (c) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(6) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

- (a) Polygraph testing;
- (b) Hypnosis;
- (c) Electronic surveillance;
- (d) Use of informants.

(7) Prefiling Discussions with Defendant

Discussions with the defendant or his or her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(8) Plea dispositions:

STANDARD

(a) Except as provided in subsection (2) of this section, a respondent will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(b) In certain circumstances, a plea agreement with a respondent in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

- (i) Evidentiary problems which make conviction of the original charges doubtful;
- (ii) The respondent's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;

(iii) A request by the victim when it is not the result of pressure from the respondent;

(iv) The discovery of facts which mitigate the seriousness of the respondent's conduct;

(v) The correction of errors in the initial charging decision;

(vi) The respondent's history with respect to criminal activity;

(vii) The nature and seriousness of the offense or offenses charged;

(viii) The probable effect of witnesses.

(c) No plea agreement shall be influenced by the race, gender, religion, or creed of the respondent. This includes but is not limited to the prosecutor's decision to utilize such disposition alternatives as the Special Sex Offender Disposition Alternative, the Chemical Dependency Disposition Alternative, and manifest injustice.

(9) Disposition recommendations:

STANDARD

The prosecutor may reach an agreement regarding disposition recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement. [1997 c 338 § 18; 1996 c 9 § 1.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.080 Diversion agreement—Scope—Limitations—Restitution orders—Divertee's rights—Diversionary unit's powers and duties—Interpreters—Modification—Fines.

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversionary unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to one or more of the following:

(a) Community service not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by the victim;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth; responsibility; work ethics; good citizenship; literacy; and life skills. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, if approved by the diversion unit. The state shall not be liable for costs resulting from the diversionary unit exercising the option to permit diversion agreements to mandate attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) A fine, not to exceed one hundred dollars. In determining the amount of the fine, the diversion unit shall consider only the juvenile's financial resources and whether the juvenile has the means to pay the fine. The diversion unit shall not consider the financial resources of the juvenile's parents, guardian, or custodian in determining the fine to be imposed; and

(e) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas.

(3) In assessing periods of community service to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile's custodial parent or parents or guardian and victims who have contacted the diversionary unit and, to the extent possible, involve members of the community. Such members of the community shall meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(4)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the diverttee.

(b) If additional time is necessary for the juvenile to complete restitution to the victim, the time period limitations of this subsection may be extended by an additional six months.

(c) If the juvenile has not paid the full amount of restitution by the end of the additional six-month period, then the juvenile shall be referred to the juvenile court for entry of an order establishing the amount of restitution still owed to the victim. In this order, the court shall also determine the terms and conditions of the restitution, including a payment plan extending up to ten years if the court determines that the juvenile does not have the means to make full restitution over a shorter period. For the purposes of this subsection (4)(c), the juvenile shall remain under the court's jurisdiction for a maximum term of ten years after the juvenile's eighteenth birthday. Prior to the expiration of the initial ten-year period, the juvenile court may extend the judgment for restitution an additional ten years. The court may not require the juvenile to pay full or partial restitution if the juvenile reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a ten-year period. The county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments. A juvenile under obligation to pay restitution may petition the court for modification of the restitution order.

(5) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(6) Diverttees and potential diverttees shall be afforded due process in all contacts with a diversionary unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No diverttee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the diverttee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the diverttee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the diverttee was diverted:

(i) In juvenile court if the diverttee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the diverttee is eighteen years of age or older.

(7) The diversion unit shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during diversion unit hearings or negotiations.

(8) The diversion unit shall be responsible for advising a diverttee of his or her rights as provided in this chapter.

(9) The diversion unit may refer a juvenile to community-based counseling or treatment programs.

(10) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by *RCW 13.40.020(9). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversionary unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

(11) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

(a) The fact that a charge or charges were made;

- (b) The fact that a diversion agreement was entered into;
- (c) The juvenile's obligations under such agreement;
- (d) Whether the alleged offender performed his or her obligations under such agreement; and
- (e) The facts of the alleged offense.

(12) A diversionary unit may refuse to enter into a diversion agreement with a juvenile. When a diversionary unit refuses to enter a diversion agreement with a juvenile, it shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversionary unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(13) A diversionary unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement. A diversion unit's authority to counsel and release a juvenile under this subsection shall include the authority to refer the juvenile to community-based counseling or treatment programs. Any juvenile released under this subsection shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by *RCW 13.40.020(9). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language. A juvenile determined to be eligible by a diversionary unit for release as provided in this subsection shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(14) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(15) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community service. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community service in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(16) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties

exhaust existing resources before using amounts collected under this section. [1997 c 338 § 70; 1997 c 121 § 8; 1996 c 124 § 1; 1994 sp.s. c 7 § 544; 1992 c 205 § 108; 1985 c 73 § 2; 1983 c 191 § 16; 1981 c 299 § 8; 1979 c 155 § 61; 1977 ex.s. c 291 § 62.]

***Reviser's note:** Due to an alphabetization directive by 1997 c 338, subsection (9) is now subsection (7).

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Application—1994 sp.s. c 7 §§ 540-545: See note following RCW 13.50.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—1985 c 73: See note following RCW 13.40.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.085 Diversion services costs—Fees—Payment by parent or legal guardian. The county legislative authority may authorize juvenile court administrators to establish fees to cover the costs of the administration and operation of diversion services provided under this chapter. The parent or legal guardian of a juvenile who receives diversion services must pay for the services based on the parent's or guardian's ability to pay. The juvenile court administrators shall develop a fair and equitable payment schedule. No juvenile who is eligible for diversion as provided in this chapter may be denied diversion services based on an inability to pay for the services. [1993 c 171 § 1.]

13.40.090 Prosecuting attorney as party to juvenile court proceedings—Exception, procedure. The county prosecuting attorney shall be a party to all juvenile court proceedings involving juvenile offenders or alleged juvenile offenders.

The prosecuting attorney may, after giving appropriate notice to the juvenile court, decline to represent the state of Washington in juvenile court matters except felonies unless requested by the court on an individual basis to represent the state at an adjudicatory hearing in which case he or she shall participate. When the prosecutor declines to represent the state, then such function may be performed by the juvenile court probation counselor authorized by the court or local court rule to serve as the prosecuting authority.

If the prosecuting attorney elects not to participate, the prosecuting attorney shall file with the county clerk each year by the first Monday in July notice of intent not to participate. In a county wherein the prosecuting attorney has elected not to participate in juvenile court, he or she shall not thereafter until the next filing date participate in juvenile court proceedings unless so requested by the court on an individual basis, in which case the prosecuting attorney shall participate. [1977 ex.s. c 291 § 63.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.100 Summons or other notification issued upon filing of information—Procedure—Order to take juvenile into custody—Contempt of court, when. (1) Upon the filing of an information the alleged offender shall be notified by summons, warrant, or other method approved by the court of the next required court appearance.

(2) If notice is by summons, the clerk of the court shall issue a summons directed to the juvenile, if the juvenile is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons.

(3) A copy of the information shall be attached to each summons.

(4) The summons shall advise the parties of the right to counsel.

(5) The judge may endorse upon the summons an order directing the parents, guardian, or custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the juvenile needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the juvenile into custody and take the juvenile to the place of detention or shelter designated by the court.

(7) Service of summons may be made under the direction of the court by any law enforcement officer or probation counselor.

(8) If the person summoned as herein provided fails without reasonable cause to appear and abide the order of the court, the person may be proceeded against as for contempt of court. In determining whether a parent, guardian, or custodian had reasonable cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned. [1997 c 338 § 19; 1979 c 155 § 62; 1977 ex.s. c 291 § 64.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.110 Hearing on question of declining jurisdiction—Held, when—Findings. (1) The prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction. Unless waived by the court, the parties, and their counsel, a decline hearing shall be held when:

(a) The respondent is fifteen, sixteen, or seventeen years of age and the information alleges a class A felony or an

attempt, solicitation, or conspiracy to commit a class A felony;

(b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent liberties, child molestation in the second degree, kidnapping in the second degree, or robbery in the second degree; or

(c) The information alleges an escape by the respondent and the respondent is serving a minimum juvenile sentence to age twenty-one.

(2) The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public. The court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel.

(3) When the respondent is transferred for criminal prosecution or retained for prosecution in juvenile court, the court shall set forth in writing its finding which shall be supported by relevant facts and opinions produced at the hearing. [1997 c 338 § 20; 1990 c 3 § 303; 1988 c 145 § 18; 1979 c 155 § 63; 1977 ex.s. c 291 § 65.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.120 Hearings—Time and place. All hearings may be conducted at any time or place within the limits of the judicial district, and such cases may not be heard in conjunction with other business of any other division of the superior court. [1981 c 299 § 9; 1979 c 155 § 64; 1977 ex.s. c 291 § 66.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.127 Deferred disposition. (1) A juvenile is eligible for deferred disposition unless he or she:

- (a) Is charged with a sex or violent offense;
- (b) Has a criminal history which includes any felony;
- (c) Has a prior deferred disposition or deferred adjudication; or
- (d) Has two or more diversions.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition.

(3) Any juvenile who agrees to a deferral of disposition shall:

(a) Stipulate to the admissibility of the facts contained in the written police report;

(b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision; and

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile's failure to comply with the probation bond. The state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision.

(7) A juvenile's lack of compliance shall be determined by the judge upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor. If a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition.

(8) At any time following deferral of disposition the court may, following a hearing, continue the case for an additional one-year period for good cause.

(9) At the conclusion of the period set forth in the order of deferral and upon a finding by the court of full compliance with conditions of supervision and payment of full restitution, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice. [1997 c 338 § 21.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.130 Procedure upon plea of guilty or not guilty to information allegations—Notice—Adjudicatory and disposition hearing—Disposition standards used in sentencing. (1) The respondent shall be advised of the allegations in the information and shall be required to plead guilty or not guilty to the allegation(s). The state or the respondent may make preliminary motions up to the time of the plea.

(2) If the respondent pleads guilty, the court may proceed with disposition or may continue the case for a dispositional hearing. If the respondent denies guilt, an adjudicatory hearing date shall be set. The court shall notify the parent, guardian, or custodian who has custody of a juvenile described in the charging document of the

dispositional or adjudicatory hearing and shall require attendance.

(3) At the adjudicatory hearing it shall be the burden of the prosecution to prove the allegations of the information beyond a reasonable doubt.

(4) The court shall record its findings of fact and shall enter its decision upon the record. Such findings shall set forth the evidence relied upon by the court in reaching its decision.

(5) If the respondent is found not guilty he or she shall be released from detention.

(6) If the respondent is found guilty the court may immediately proceed to disposition or may continue the case for a dispositional hearing. Notice of the time and place of the continued hearing may be given in open court. If notice is not given in open court to a party, the party and the parent, guardian, or custodian who has custody of the juvenile shall be notified by mail of the time and place of the continued hearing.

(7) The court following an adjudicatory hearing may request that a predisposition study be prepared to aid the court in its evaluation of the matters relevant to disposition of the case.

(8) The disposition hearing shall be held within fourteen days after the adjudicatory hearing or plea of guilty unless good cause is shown for further delay, or within twenty-one days if the juvenile is not held in a detention facility, unless good cause is shown for further delay.

(9) In sentencing an offender, the court shall use the disposition standards in effect on the date of the offense.

(10) A person notified under this section who fails without reasonable cause to appear and abide by the order of the court may be proceeded against as for contempt of court. In determining whether a parent, guardian, or custodian had reasonable cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned. [1997 c 338 § 22; 1981 c 299 § 10; 1979 c 155 § 65; 1977 ex.s. c 291 § 67.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.135 Sexual motivation special allegation—Procedures. (1) The prosecuting attorney shall file a special allegation of sexual motivation in every juvenile offense other than sex offenses as defined in RCW 9.94A.030(33) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably consistent defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.

(2) In a juvenile case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the juvenile committed the offense with a sexual motivation. The court shall make a finding of fact of whether or not the sexual motivation was present at the time of the commission of the offense. This finding shall not be

applied to sex offenses as defined in RCW 9.94A.030(33) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of "sexual motivation" without approval of the court through an order of dismissal. The court shall not dismiss the special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [1997 c 338 § 23; 1990 c 3 § 604.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Effective date—Application—1990 c 3 §§ 601-605: See note following RCW 9.94A.127.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

13.40.140 Juveniles entitled to usual judicial rights—Notice of—Open court—Privilege against self-incrimination—Waiver of rights, when. (1) A juvenile shall be advised of his or her rights when appearing before the court.

(2) A juvenile and his or her parent, guardian, or custodian shall be advised by the court or its representative that the juvenile has a right to be represented by counsel at all critical stages of the proceedings. Unless waived, counsel shall be provided to a juvenile who is financially unable to obtain counsel without causing substantial hardship to himself or herself or the juvenile's family, in any proceeding where the juvenile may be subject to transfer for criminal prosecution, or in any proceeding where the juvenile may be in danger of confinement. The ability to pay part of the cost of counsel does not preclude assignment. In no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay therefor. The juvenile shall be fully advised of his or her right to an attorney and of the relevant services an attorney can provide.

(3) The right to counsel includes the right to the appointment of experts necessary, and the experts shall be required pursuant to the procedures and requirements established by the supreme court.

(4) Upon application of a party, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing, or such subpoenas may be issued by an attorney of record.

(5) All proceedings shall be transcribed verbatim by means which will provide an accurate record.

(6) The general public and press shall be permitted to attend any hearing unless the court, for good cause, orders a particular hearing to be closed. The presumption shall be that all such hearings will be open.

(7) In all adjudicatory proceedings before the court, all parties shall have the right to adequate notice, discovery as provided in criminal cases, opportunity to be heard, confrontation of witnesses except in such cases as this chapter expressly permits the use of hearsay testimony, findings based solely upon the evidence adduced at the hearing, and an unbiased fact-finder.

(8) A juvenile shall be accorded the same privilege against self-incrimination as an adult. An extrajudicial statement which would be constitutionally inadmissible in a criminal proceeding may not be received in evidence at an adjudicatory hearing over objection. Evidence illegally seized or obtained may not be received in evidence over objection at an adjudicatory hearing to prove the allegations against the juvenile if the evidence would be inadmissible in an adult criminal proceeding. An extrajudicial admission or confession made by the juvenile out of court is insufficient to support a finding that the juvenile committed the acts alleged in the information unless evidence of a corpus delicti is first independently established in the same manner as required in an adult criminal proceeding.

(9) Waiver of any right which a juvenile has under this chapter must be an express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived.

(10) Whenever this chapter refers to waiver or objection by a juvenile, the word juvenile shall be construed to refer to a juvenile who is at least twelve years of age. If a juvenile is under twelve years of age, the juvenile's parent, guardian, or custodian shall give any waiver or offer any objection contemplated by this chapter. [1981 c 299 § 11; 1979 c 155 § 66; 1977 ex.s. c 291 § 68.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.145 Payment of fees for legal services by publicly funded counsel—Hearing—Order or decree—Entering and enforcing judgments. Upon disposition or at the time of a modification or at the time an appellate court remands the case to the trial court following a ruling in favor of the state the court may order the juvenile or a parent or another person legally obligated to support the juvenile to appear, and the court may inquire into the ability of those persons to pay a reasonable sum representing in whole or in part the fees for legal services provided by publicly funded counsel and the costs incurred by the public in producing a verbatim report of proceedings and clerk's papers for use in the appellate courts.

If, after hearing, the court finds the juvenile, parent, or other legally obligated person able to pay part or all of the attorney's fees and costs incurred on appeal, the court may enter such order or decree as is equitable and may enforce the order or decree by execution, or in any way in which a court of equity may enforce its decrees.

In no event may the court order an amount to be paid for attorneys' fees that exceeds the average per case fee allocation for juvenile proceedings in the county where the services have been provided or the average per case fee allocation for juvenile appeals established by the Washington supreme court.

In any case in which there is no compliance with an order or decree of the court requiring a juvenile, parent, or other person legally obligated to support the juvenile to pay for legal services provided by publicly funded counsel, the court may, upon such person or persons being properly summoned or voluntarily appearing, proceed to inquire into the amount due upon the order or decree and enter judgment

for that amount against the defaulting party or parties. Judgment shall be docketed in the same manner as are other judgments for the payment of money.

The county in which such judgments are entered shall be denominated the judgment creditor, and the judgments may be enforced by the prosecuting attorney of that county. Any moneys recovered thereon shall be paid into the registry of the court and shall be disbursed to such person, persons, agency, or governmental entity as the court finds entitled thereto.

Such judgments shall remain valid and enforceable for a period of ten years subsequent to entry.

When the juvenile reaches the age of eighteen or at the conclusion of juvenile court jurisdiction, whichever occurs later, the superior court clerk must docket the remaining balance of the juvenile's legal financial obligations in the same manner as other judgments for the payment of money. The judgment remains valid and enforceable until ten years from the date of its imposition. The clerk of superior court may seek extension of the judgment for legal financial obligations, including crime victims' assessments, in the same manner as RCW 6.17.020 for purposes of collection as allowed under RCW 36.18.190. [1997 c 121 § 6; 1995 c 275 § 4; 1984 c 86 § 1.]

Finding—Severability—1995 c 275: See notes following RCW 10.73.150.

13.40.150 Disposition hearing—Scope—Factors to be considered prior to entry of dispositional order. (1)

In disposition hearings all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible in a hearing on the information. The youth or the youth's counsel and the prosecuting attorney shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when such individuals are reasonably available, but sources of confidential information need not be disclosed. The prosecutor and counsel for the juvenile may submit recommendations for disposition.

(2) For purposes of disposition:

(a) Violations which are current offenses count as misdemeanors;

(b) Violations may not count as part of the offender's criminal history;

(c) In no event may a disposition for a violation include confinement.

(3) Before entering a dispositional order as to a respondent found to have committed an offense, the court shall hold a disposition hearing, at which the court shall:

(a) Consider the facts supporting the allegations of criminal conduct by the respondent;

(b) Consider information and arguments offered by parties and their counsel;

(c) Consider any predisposition reports;

(d) Consult with the respondent's parent, guardian, or custodian on the appropriateness of dispositional options under consideration and afford the respondent and the respondent's parent, guardian, or custodian an opportunity to speak in the respondent's behalf;

(e) Allow the victim or a representative of the victim and an investigative law enforcement officer to speak;

(f) Determine the amount of restitution owing to the victim, if any, or set a hearing for a later date not to exceed one hundred eighty days from the date of the disposition hearing to determine the amount, except that the court may continue the hearing beyond the one hundred eighty days for good cause;

(g) Determine the respondent's offender score;

(h) Consider whether or not any of the following mitigating factors exist:

(i) The respondent's conduct neither caused nor threatened serious bodily injury or the respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury;

(ii) The respondent acted under strong and immediate provocation;

(iii) The respondent was suffering from a mental or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense;

(iv) Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and

(v) There has been at least one year between the respondent's current offense and any prior criminal offense;

(i) Consider whether or not any of the following aggravating factors exist:

(i) In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;

(ii) The offense was committed in an especially heinous, cruel, or depraved manner;

(iii) The victim or victims were particularly vulnerable;

(iv) The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;

(v) The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;

(vi) The respondent was the leader of a criminal enterprise involving several persons;

(vii) There are other complaints which have resulted in diversion or a finding or plea of guilty but which are not included as criminal history; and

(viii) The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.

(4) The following factors may not be considered in determining the punishment to be imposed:

(a) The sex of the respondent;

(b) The race or color of the respondent or the respondent's family;

(c) The creed or religion of the respondent or the respondent's family;

(d) The economic or social class of the respondent or the respondent's family; and

(e) Factors indicating that the respondent may be or is a dependent child within the meaning of this chapter.

(5) A court may not commit a juvenile to a state institution solely because of the lack of facilities, including treatment facilities, existing in the community. [1998 c 86 § 1; 1997 c 338 § 24; 1995 c 268 § 5; 1992 c 205 § 109;

1990 c 3 § 605; 1981 c 299 § 12; 1979 c 155 § 67; 1977 ex.s. c 291 § 69.]

Effective date—1998 c 86: "This act takes effect July 1, 1998." [1998 c 86 § 2.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Purpose—1995 c 268: See note following RCW 9.94A.030.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Application—1990 c 3 §§ 601-605: See note following RCW 9.94A.127.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative. (1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsections (2), (4), and (5) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsections (2), (4), and (5) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option C of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) Where a respondent is found to have committed an offense for which the respondent declined to enter into a diversion agreement, the court shall impose a term of community supervision limited to the conditions allowed in a diversion agreement as provided in RCW 13.40.080(2).

(4) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a

serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(a)(i) Frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option C, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(b)(i) Devote time to a specific education, employment, or occupation;

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court

approval after a hearing if the prosecutor or probation counselor object to the change;

(iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(v) Report as directed to the court and a probation counselor;

(vi) Pay all court-ordered legal financial obligations, perform community service, or any combination thereof;

(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;

(viii) Comply with the conditions of any court-ordered probation bond; or

(ix) The court shall order that the offender may not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection (4), after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (4) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement

for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

A disposition entered under this subsection (4) is not appealable under RCW 13.40.230.

(5) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(6) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(1)(b)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(7) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(8) Except as provided under subsection (4) or (5) of this section or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(9) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense. [1997 c 338 § 25; 1997 c 265 § 1; 1995 c 395 § 7; 1994 sp.s. c 7 § 523; 1992 c 45 § 6; 1990 c 3 § 302; 1989 c 407 § 4; 1983 c 191 § 8; 1981 c 299 § 13; 1979 c 155 § 68; 1977 ex.s. c 291 § 70.]

Reviser's note: This section was amended by 1997 c 265 § 1 and by 1997 c 338 § 25, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—1997 c 265: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 265 § 9.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—Application—1992 c 45: See notes following RCW 9.94A.151.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.165 Chemical dependency disposition alternative. (1) When a juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the

court, on its own motion or the motion of the state or the respondent if the evidence shows that the offender may be chemically dependent, may order an examination by a chemical dependency counselor from a chemical dependency treatment facility approved under chapter 70.96A RCW to determine if the youth is chemically dependent and amenable to treatment.

(2) The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of drug-alcohol problems and previous treatment attempts, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the examiner's information.

(3) The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a) Whether inpatient and/or outpatient treatment is recommended;
- (b) Availability of appropriate treatment;
- (c) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (d) Anticipated length of treatment;
- (e) Recommended crime-related prohibitions; and
- (f) Whether the respondent is amenable to treatment.

(4) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any examination ordered under this subsection (4) or subsection (1) of this section unless the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(5)(a) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this chemical dependency disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

(b) If the court determines that this chemical dependency disposition alternative is appropriate, then the court shall impose the standard range for the offense, suspend execution of the disposition, and place the offender on community supervision for up to one year. As a condition of the suspended disposition, the court shall require the offender to undergo available outpatient drug/alcohol treatment and/or inpatient drug/alcohol treatment. For purposes of this section, the sum of confinement time and inpatient treatment may not exceed ninety days. As a condition of the suspended disposition, the court may impose conditions of community supervision and other sanctions, including up to thirty days of confinement, one hundred fifty hours of community service, and payment of legal financial obligations and restitution.

(6) The drug/alcohol treatment provider shall submit monthly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following:

Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(7) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged.

(8) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(9) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

(10) A disposition under this section is not appealable under RCW 13.40.230. [1997 c 338 § 26.]

Effectiveness standards—1997 c 338 § 26: "The University of Washington shall develop standards for measuring effectiveness of treatment programs established under section 26 of this act. The standards shall be developed and presented to the governor and legislature not later than January 1, 1998. The standards shall include methods for measuring success factors following treatment. Success factors shall include, but need not be limited to, continued use of alcohol or controlled substances, arrests, violations of terms of community supervision, and convictions for subsequent offenses." [1997 c 338 § 27.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.180 Disposition order—Consecutive terms when two or more offenses—Limitations. Where a disposition is imposed on a youth for two or more offenses, the terms shall run consecutively, subject to the following limitations:

(1) Where the offenses were committed through a single act or omission, omission, or through an act or omission which in itself constituted one of the offenses and also was an element of the other, the aggregate of all the terms shall not exceed one hundred fifty percent of the term imposed for the most serious offense;

(2) The aggregate of all consecutive terms shall not exceed three hundred percent of the term imposed for the most serious offense; and

(3) The aggregate of all consecutive terms of community supervision shall not exceed two years in length, or require payment of more than two hundred dollars in fines or the performance of more than two hundred hours of community service. [1981 c 299 § 14; 1977 ex.s. c 291 § 72.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.185 Disposition order—Confinement under departmental supervision or in juvenile facility, when.

(1) Any term of confinement imposed for an offense which exceeds thirty days shall be served under the supervision of the department. If the period of confinement imposed for more than one offense exceeds thirty days but the term imposed for each offense is less than thirty days, the confinement may, in the discretion of the court, be served in a juvenile facility operated by or pursuant to a contract with the state or a county.

(2) Whenever a juvenile is confined in a detention facility or is committed to the department, the court may not directly order a juvenile into a particular county or state facility. The juvenile court administrator and the secretary, assistant secretary, or the secretary's designee, as appropriate, has the sole discretion to determine in which facility a juvenile should be confined or committed. The counties may operate a variety of detention facilities as determined by the county legislative authority subject to available funds. [1994 sp.s. c 7 § 524; 1981 c 299 § 15.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.190 Disposition order—Restitution for loss—Modification of restitution order.

(1) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted. The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter. The court may determine the amount, terms, and conditions of the restitution including a payment plan extending up to ten years if the court determines that the respondent does not have the means to make full restitution over a shorter period. Restitution may include the costs of counseling reasonably related to the offense. If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of restitution for an additional ten years.

(2) Regardless of the provisions of subsection (1) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the

disposition order for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(3) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(4) A respondent under obligation to pay restitution may petition the court for modification of the restitution order. [1997 c 338 § 29; 1997 c 121 § 9; 1996 c 124 § 2; 1995 c 33 § 5; 1994 sp.s. c 7 § 528; 1987 c 281 § 5; 1985 c 257 § 2; 1983 c 191 § 9; 1979 c 155 § 69; 1977 ex.s. c 291 § 73.]

Reviser's note: This section was amended by 1997 c 121 § 9 and by 1997 c 338 § 29, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1987 c 281: See note following RCW 7.68.020.

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.192 Legal financial obligations—Enforceability—Treatment of obligations upon age of eighteen or conclusion of juvenile court jurisdiction—Extension of judgment.

If a juvenile is ordered to pay legal financial obligations, including fines, penalty assessments, attorneys' fees, court costs, and restitution, the money judgment remains enforceable for a period of ten years. When the juvenile reaches the age of eighteen years or at the conclusion of juvenile court jurisdiction, whichever occurs later, the superior court clerk must docket the remaining balance of the juvenile's legal financial obligations in the same manner as other judgments for the payment of money. The judgment remains valid and enforceable until ten years from the date of its imposition. The clerk of the superior court may seek extension of the judgment for legal financial obligations, including crime victims' assessments, in the same manner as RCW 6.17.020 for purposes of collection as allowed under RCW 36.18.190. [1997 c 121 § 7.]

13.40.193 Firearms—Length of confinement.

(1) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040(1)(b)(iii), the court shall impose a minimum disposition of ten days of confinement. If the offender's standard range of disposition for the offense as indicated in RCW 13.40.0357 is more than thirty days of confinement, the court shall commit the offender to the department for the standard range disposition. The offender shall not be released until the offender has served a minimum of ten days in confinement.

(2) If the court finds that the respondent or an accomplice was armed with a firearm, the court shall determine the

standard range disposition for the offense pursuant to RCW 13.40.160. If the offender or an accomplice was armed with a firearm when the offender committed any felony other than possession of a machine gun, possession of a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, or use of a machine gun in a felony, the following periods of total confinement must be added to the sentence: For a class A felony, six months; for a class B felony, four months; and for a class C felony, two months. The additional time shall be imposed regardless of the offense's juvenile disposition offense category as designated in RCW 13.40.0357.

(3) When a disposition under this section would effectuate a manifest injustice, the court may impose another disposition. When a judge finds a manifest injustice and imposes a disposition of confinement exceeding thirty days, the court shall commit the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. When a judge finds a manifest injustice and imposes a disposition of confinement less than thirty days, the disposition shall be comprised of confinement or community supervision or both.

(4) Any term of confinement ordered pursuant to this section shall run consecutively to any term of confinement imposed in the same disposition for other offenses. [1997 c 338 § 30; 1994 sp.s. c 7 § 525.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.196 Firearms—Special allegation. A prosecutor may file a special allegation that the offender or an accomplice was armed with a firearm when the offender committed the alleged offense. If a special allegation has been filed and the court finds that the offender committed the alleged offense, the court shall also make a finding whether the offender or an accomplice was armed with a firearm when the offender committed the offense. [1994 sp.s. c 7 § 526.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.200 Violation of order of restitution, community supervision, fines, penalty assessments, or confinement—Modification of order after hearing—Scope—Rights—Use of fines. (1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

(2) The hearing shall afford the respondent the same due process of law as would be afforded an adult probationer. The court may issue a summons or a warrant to compel the respondent's appearance. The state shall have the burden of proving by a preponderance of the evidence the fact of the violation. The respondent shall have the burden of showing that the violation was not a willful refusal to comply with the terms of the order. If a respondent has failed to pay a fine, penalty assessments, or restitution or to perform

community service hours, as required by the court, it shall be the respondent's burden to show that he or she did not have the means and could not reasonably have acquired the means to pay the fine, penalty assessments, or restitution or perform community service.

(3) If the court finds that a respondent has willfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days' confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall never exceed the maximum term to which an adult could be sentenced for the underlying offense.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community service. The number of hours of community service in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section.

(5) When a respondent has willfully violated the terms of a probation bond, the court may modify, revoke, or retain the probation bond as provided in RCW 13.40.054. [1997 c 338 § 31; 1995 c 395 § 8; 1986 c 288 § 5; 1983 c 191 § 15; 1979 c 155 § 70; 1977 ex.s. c 291 § 74.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—1986 c 288: See note following RCW 13.32A.050.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.205 Release from physical custody, when—Authorized leaves—Leave plan and order—Notice. (1) A juvenile sentenced to a term of confinement to be served under the supervision of the department shall not be released from the physical custody of the department prior to the release date established under RCW 13.40.210 except as otherwise provided in this section.

(2) A juvenile serving a term of confinement under the supervision of the department may be released on authorized leave from the physical custody of the department only if consistent with public safety and if:

(a) Sixty percent of the minimum term of confinement has been served; and

(b) The purpose of the leave is to enable the juvenile:

(i) To visit the juvenile's family for the purpose of strengthening or preserving family relationships;

(ii) To make plans for parole or release which require the juvenile's personal appearance in the community and

which will facilitate the juvenile's reintegration into the community; or

(iii) To make plans for a residential placement out of the juvenile's home which requires the juvenile's personal appearance in the community.

(3) No authorized leave may exceed seven consecutive days. The total of all pre-minimum term authorized leaves granted to a juvenile prior to final discharge from confinement shall not exceed thirty days.

(4) Prior to authorizing a leave, the secretary shall require a written leave plan, which shall detail the purpose of the leave and how it is to be achieved, the address at which the juvenile shall reside, the identity of the person responsible for supervising the juvenile during the leave, and a statement by such person acknowledging familiarity with the leave plan and agreeing to supervise the juvenile and to notify the secretary immediately if the juvenile violates any terms or conditions of the leave. The leave plan shall include such terms and conditions as the secretary deems appropriate and shall be signed by the juvenile.

(5) Upon authorizing a leave, the secretary shall issue to the juvenile an authorized leave order which shall contain the name of the juvenile, the fact that the juvenile is on leave from a designated facility, the time period of the leave, and the identity of an appropriate official of the department to contact when necessary. The authorized leave order shall be carried by the juvenile at all times while on leave.

(6) Prior to the commencement of any authorized leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will reside during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave.

(7) The secretary may authorize a leave, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the period of time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. In cases of emergency or medical leave the secretary may waive all or any portions of subsections (2)(a), (3), (4), (5), and (6) of this section.

(8) If requested by the juvenile's victim or the victim's immediate family, the secretary shall give notice of any leave to the victim or the victim's immediate family.

(9) A juvenile who violates any condition of an authorized leave plan may be taken into custody and returned to the department in the same manner as an adult in identical circumstances.

(10) Notwithstanding the provisions of this section, a juvenile placed in minimum security status may participate in work, educational, community service, or treatment programs in the community up to twelve hours a day if approved by the secretary. Such a release shall not be deemed a leave of absence.

(11) Subsections (6), (7), and (8) of this section do not apply to juveniles covered by RCW 13.40.215. [1990 c 3 § 103; 1983 c 191 § 10.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

13.40.210 Setting of release or discharge date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Intensive supervision program—Parole officer's right of arrest. (1)

The secretary shall, except in the case of a juvenile committed by a court to a term of confinement in a state institution outside the appropriate standard range for the offense(s) for which the juvenile was found to be guilty established pursuant to RCW 13.40.030, set a release or discharge date for each juvenile committed to its custody. The release or discharge date shall be within the prescribed range to which a juvenile has been committed except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the juvenile's release under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six

months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section. The decision to place an offender on parole shall be based on an assessment by the department of the offender's risk for reoffending upon release. The department shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitoring; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community service. Community service for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community service may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervi-

sion authorized by this chapter; (iv) except as provided in (a)(v) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; and (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030.

(b) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the juvenile for at least thirty days. Confinement shall be in a facility operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section. [1997 c 338 § 32; 1994 sp.s. c 7 § 527; 1990 c 3 § 304; 1987 c 505 § 4; 1985 c 287 § 1; 1985 c 257 § 4; 1983 c 191 § 11; 1979 c 155 § 71; 1977 ex.s. c 291 § 75.]

Findings—Intent—1997 c 338 §§ 32, 34: See note following RCW 13.40.212.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Intent—1985 c 257 § 4: "To promote both public safety and the welfare of juvenile offenders, it is the intent of the legislature that services to juvenile offenders be delivered in the most effective and efficient means possible. Section 4 of this act facilitates those objectives by permitting counties to supervise parole of juvenile offenders. This is consistent with the philosophy of chapter 13.06 RCW to deliver community services to juvenile offenders comprehensively at the county level." [1985 c 257 § 3.]

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.212 Intensive supervision program—Elements—Report. (1) The department shall, no later than January 1, 1999, implement an intensive supervision program as a part of its parole services that includes, at a minimum, the following program elements:

(a) A process of case management involving coordinated and comprehensive planning, information exchange, continuity and consistency, service provision and referral, and

monitoring. The components of the case management system shall include assessment, classification, and selection criteria; individual case planning that incorporates a family and community perspective; a mixture of intensive surveillance and services; a balance of incentives and graduated consequences coupled with the imposition of realistic, enforceable conditions; and service brokerage with community resources and linkage with social networks;

(b) Administration of transition services that transcend traditional agency boundaries and professional interests and include courts, institutions, aftercare, education, social and mental health services, substance abuse treatment, and employment and vocational training; and

(c) A plan for information management and program evaluation that maintains close oversight over implementation and quality control, and determines the effectiveness of both the processes and outcomes of the program.

(2) The department shall report annually to the legislature, beginning December 1, 1999, on the department's progress in meeting the intensive supervision program evaluation goals required under subsection (1)(c) of this section. [1997 c 338 § 34.]

Findings—Intent—1997 c 338 §§ 32, 34: "The legislature finds the present system of transitioning youths from residential status to parole status to discharge is insufficient to provide adequate rehabilitation and public safety in many instances, particularly in cases of offenders at highest risk of reoffending. The legislature further finds that an intensive supervision program based on the following principles holds much promise for positively impacting recidivism rates for juvenile offenders: (1) Progressive increase in responsibility and freedom in the community; (2) facilitation of youths' interaction and involvement with their communities; (3) involvement of both the youth and targeted community support systems such as family, peers, schools, and employers, on the qualities needed for constructive interaction and successful adjustment with the community; (4) development of new resources, supports, and opportunities where necessary; and (5) ongoing monitoring and testing of youth on their ability to abide by community rules and standards.

The legislature intends for the department to create an intensive supervision program based on the principles stated in this section that will be available to the highest risk juvenile offenders placed on parole." [1997 c 338 § 33.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.215 Juveniles found to have committed violent or sex offense or stalking—Notification of discharge, parole, leave, release, transfer, or escape—To whom given—School attendance—Definitions. (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before discharge, parole, or any other authorized leave or release, or before transfer to a community residential facility, the secretary shall send written notice of the discharge, parole, authorized leave or release, or transfer of a juvenile found to have committed a violent offense, a sex offense, or stalking, to the following:

(i) The chief of police of the city, if any, in which the juvenile will reside;

(ii) The sheriff of the county in which the juvenile will reside; and

(iii) The approved private schools and the common school district board of directors of the district in which the juvenile intends to reside or the approved private school or

public school district in which the juvenile last attended school, whichever is appropriate, except when it has been determined by the department that the juvenile is twenty-one years old; is not required to return to school under chapter 28A.225 RCW; or will be in the community for less than seven consecutive days on approved leave and will not be attending school during that time.

(b) After July 27, 1997, the department shall send a written notice to approved private and public schools under the same conditions identified in subsection (1)(a)(iii) of this section when a juvenile adjudicated of any offense is transferred to a community residential facility.

(c) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific juvenile:

(i) The victim of the offense for which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the juvenile in any court proceedings involving the offense; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the juvenile. The notice to the chief of police or the sheriff shall include the identity of the juvenile, the residence where the juvenile will reside, the identity of the person, if any, responsible for supervising the juvenile, and the time period of any authorized leave.

(d) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical furloughs.

(e) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2)(a) If a juvenile found to have committed a violent offense, a sex offense, or stalking escapes from a facility of the department, the secretary shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the juvenile resided immediately before the juvenile's arrest. If previously requested, the secretary shall also notify the witnesses and the victim of the offense which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide. If the juvenile is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(b) The secretary may authorize a leave, for a juvenile found to have committed a violent offense, a sex offense, or stalking, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. Prior to the commencement of an emergency or medical leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will be during the leave period. The notice shall include the identity of the juvenile, the time period

of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave. If previously requested, the department shall also notify the witnesses and victim of the offense which the juvenile was found to have committed or the victim's next of kin if the offense was a homicide.

In case of an emergency or medical leave the secretary may waive all or any portion of the requirements for leaves pursuant to RCW 13.40.205 (2)(a), (3), (4), and (5).

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The secretary shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) Upon discharge, parole, or other authorized leave or release, a convicted juvenile sex offender shall not attend a public or approved private elementary, middle, or high school that is attended by a victim or a sibling of a victim of the sex offender. The parents or legal guardians of the convicted juvenile sex offender shall be responsible for transportation or other costs associated with or required by the sex offender's change in school that otherwise would be paid by a school district. Upon discharge, parole, or other authorized leave or release of a convicted juvenile sex offender, the secretary shall send written notice of the discharge, parole, or other authorized leave or release and the requirements of this subsection to the common school district board of directors of the district in which the sex offender intends to reside or the district in which the sex offender last attended school, whichever is appropriate. The secretary shall send a similar notice to any approved private school the juvenile will attend, if known, or if unknown, to the approved private schools within the district the juvenile resides or intends to reside.

(6) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Stalking" means the crime of stalking as defined in RCW 9A.46.110;

(d) "Next of kin" means a person's spouse, parents, siblings, and children. [1997 c 265 § 2; 1995 c 324 § 1. Prior: 1994 c 129 § 6; 1994 c 78 § 1; 1993 c 27 § 1; 1990 c 3 § 101.]

Severability—1997 c 265: See note following RCW 13.40.160.

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

13.40.217 Juveniles adjudicated of sex offenses—Release of information authorized. (1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning juveniles adjudicated of sex offenses.

(2) In order for public agencies to have the information necessary for notifying the public about sex offenders as authorized in RCW 4.24.550, the secretary shall issue to appropriate law enforcement agencies narrative notices regarding the pending release of sex offenders from the department's juvenile rehabilitation facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification.

(3) For the purposes of this section, the department shall classify as risk level I those offenders whose risk assessments indicate a low risk of reoffense within the community at large. The department shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The department shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large. [1997 c 364 § 2; 1990 c 3 § 102.]

Severability—1997 c 364: See note following RCW 4.24.550.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

13.40.220 Costs of support, treatment, and confinement—Order—Contempt of court. (1) Whenever legal custody of a child is vested in someone other than his or her parents, under this chapter, and not vested in the department of social and health services, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum representing in whole or in part the costs of support, treatment, and confinement of the child after the decree is entered.

(2) If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against such person for contempt.

(3) Whenever legal custody of a child is vested in the department under this chapter, the parents or other persons legally obligated to care for and support the child shall be liable for the costs of support, treatment, and confinement of the child, in accordance with the department's reimbursement of cost schedule. The department shall adopt a reimbursement of cost schedule based on the costs of providing such services, and shall determine an obligation based on the responsible parents' or other legally obligated person's ability to pay. The department is authorized to adopt additional rules as appropriate to enforce this section.

(4) To enforce subsection (3) of this section, the department shall serve on the parents or other person legally obligated to care for and support the child a notice and finding of financial responsibility requiring the parents or other legally obligated person to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect and should not be ordered. This notice and finding shall relate to the costs of support, treatment, and confinement of the child in accordance with the department's reimbursement of cost schedule

adopted under this section, including periodic payments to be made in the future. The hearing shall be held pursuant to chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department.

(5) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the parent or legally obligated person by certified mail, return receipt requested. The receipt shall be prima facie evidence of service.

(6) If the parents or other legally obligated person objects to the notice and finding of financial responsibility, then an application for an adjudicative hearing may be filed within twenty days of the date of service of the notice. If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the parents or other legally obligated person and shall also determine the amount of periodic payments to be made in the future. If the parents or other legally responsible person fails to file an application within twenty days, the notice and finding of financial responsibility shall become a final administrative order.

(7) Debts determined pursuant to this section are subject to collection action without further necessity of action by a presiding or reviewing officer. The department may collect the debt in accordance with RCW 43.20B.635, 43.20B.640, 74.20A.060, and 74.20A.070. The department shall exempt from payment parents receiving adoption support under RCW 74.13.100 through 74.13.145, parents eligible to receive adoption support under RCW 74.13.150, and a parent or other legally obligated person when the parent or other legally obligated person, or such person's child, spouse, or spouse's child, was the victim of the offense for which the child was committed.

(8) An administrative order entered pursuant to this section shall supersede any court order entered prior to June 13, 1994.

(9) The department shall be subrogated to the right of the child and his or her parents or other legally responsible person to receive support payments for the benefit of the child from any parent or legally obligated person pursuant to a support order established by a superior court or pursuant to RCW 74.20A.055. The department's right of subrogation under this section is limited to the liability established in accordance with its cost schedule for support, treatment, and confinement, except as addressed in subsection (10) of this section.

(10) Nothing in this section precludes the department from recouping such additional support payments from the child's parents or other legally obligated person as required to qualify for receipt of federal funds. The department may adopt such rules dealing with liability for recoupment of support, treatment, or confinement costs as may become necessary to entitle the state to participate in federal funds unless such rules would be expressly prohibited by law. If any law dealing with liability for recoupment of support, treatment, or confinement costs is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds, such conflicting law is declared to be inoperative solely to the extent of the conflict. [1995 c 300 § 1; 1994 sp.s. c 7 § 529; 1993 c 466 § 1; 1977 ex.s. c 291 § 76.]

(1998 Ed.)

Effective date—1995 c 300: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 9, 1995]." [1995 c 300 § 2.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.230 Appeal from order of disposition—Jurisdiction—Procedure—Scope—Release pending appeal. (1) Dispositions reviewed pursuant to RCW 13.40.160 shall be reviewed in the appropriate division of the court of appeals.

An appeal under this section shall be heard solely upon the record that was before the disposition court. No written briefs may be required, and the appeal shall be heard within thirty days following the date of sentencing and a decision rendered within fifteen days following the argument. The supreme court shall promulgate any necessary rules to effectuate the purposes of this section.

(2) To uphold a disposition outside the standard range, the court of appeals must find (a) that the reasons supplied by the disposition judge are supported by the record which was before the judge and that those reasons clearly and convincingly support the conclusion that a disposition within the range would constitute a manifest injustice, and (b) that the sentence imposed was neither clearly excessive nor clearly too lenient.

(3) If the court does not find subsection (2)(a) of this section it shall remand the case for disposition within the standard range.

(4) If the court finds subsection (2)(a) but not subsection (2)(b) of this section it shall remand the case with instructions for further proceedings consistent with the provisions of this chapter.

(5) The disposition court may impose conditions on release pending appeal as provided in RCW 13.40.040(4) and 13.40.050(6).

(6) Appeal of a disposition under this section does not affect the finality or appeal of the underlying adjudication of guilt. [1997 c 338 § 35; 1981 c 299 § 16; 1979 c 155 § 72; 1977 ex.s. c 291 § 77.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.240 Construction of RCW references to juvenile delinquents or juvenile delinquency. All references to juvenile delinquents or juvenile delinquency in other chapters of the Revised Code of Washington shall be construed as meaning juvenile offenders or the commitment of an offense by juveniles as defined by this chapter. [1977 ex.s. c 291 § 78.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.250 Traffic and civil infraction cases. A traffic or civil infraction case involving a juvenile under the age of sixteen may be diverted in accordance with the provisions of this chapter or filed in juvenile court.

(1) If a notice of a traffic or civil infraction is filed in juvenile court, the juvenile named in the notice shall be afforded the same due process afforded to adult defendants in traffic infraction cases.

(2) A monetary penalty imposed upon a juvenile under the age of sixteen who is found to have committed a traffic or civil infraction may not exceed one hundred dollars. At the juvenile's request, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the prevailing state minimum wage per hour.

(3) A diversion agreement entered into by a juvenile referred pursuant to this section shall be limited to thirty hours of community service, or educational or informational sessions.

(4) If a case involving the commission of a traffic or civil infraction or offense by a juvenile under the age of sixteen has been referred to a diversion unit, an abstract of the action taken by the diversion unit may be forwarded to the department of licensing in the manner provided for in RCW 46.20.270(2). [1997 c 338 § 36; 1980 c 128 § 16.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

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

13.40.265 Firearm, alcohol, and drug violations.

(1)(a) If a juvenile thirteen years of age or older is found by juvenile court to have committed an offense while armed with a firearm or an offense that is a violation of RCW 9.41.040(1)(b)(iii) or chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(b) Except as otherwise provided in (c) of this subsection, upon petition of a juvenile who has been found by the court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court may at any time the court deems appropriate notify the department of licensing that the juvenile's driving privileges should be reinstated.

(c) If the offense is the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered, whichever is later. If the offense is the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the date the juvenile turns seventeen or one year after the date judgment was entered, whichever is later.

(2)(a) If a juvenile enters into a diversion agreement with a diversion unit pursuant to RCW 13.40.080 concerning an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion unit shall notify the department

of licensing within twenty-four hours after the diversion agreement is signed.

(b) If a diversion unit has notified the department pursuant to (a) of this subsection, the diversion unit shall notify the department of licensing when the juvenile has completed the agreement. [1997 c 338 § 37; 1994 sp.s. c 7 § 435; 1989 c 271 § 116; 1988 c 148 § 2.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—1988 c 148: "The legislature finds that many persons under the age of eighteen unlawfully use intoxicating liquor and controlled substances. The use of these substances by juveniles can cause serious damage to their physical, mental, and emotional well-being, and in some instances results in life-long disabilities.

The legislature also finds that juveniles who unlawfully use alcohol and controlled substances frequently operate motor vehicles while under the influence of and impaired by alcohol or drugs. Juveniles who use these substances often have seriously impaired judgment and motor skills and pose an unduly high risk of causing injury or death to themselves or other persons on the public highways.

The legislature also finds that juveniles will be deterred from the unlawful use of alcohol and controlled substances if their driving privileges are suspended or revoked for using illegal drugs or alcohol." [1988 c 148 § 1.]

Severability—1988 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 148 § 10.]

13.40.280 Transfer of juvenile to department of corrections facility—Grounds—Hearing—Term—Retransfer to a facility for juveniles.

(1) The secretary, with the consent of the secretary of the department of corrections, has the authority to transfer a juvenile presently or hereafter committed to the department of social and health services to the department of corrections for appropriate institutional placement in accordance with this section.

(2) The secretary of the department of social and health services may, with the consent of the secretary of the department of corrections, transfer a juvenile offender to the department of corrections if it is established at a hearing before a review board that continued placement of the juvenile offender in an institution for juvenile offenders presents a continuing and serious threat to the safety of others in the institution. The department of social and health services shall establish rules for the conduct of the hearing, including provision of counsel for the juvenile offender.

(3) Assaults made against any staff member at a juvenile corrections institution that are reported to a local law enforcement agency shall require a hearing held by the department of social and health services review board within ten judicial working days. The board shall determine whether the accused juvenile offender represents a continuing and serious threat to the safety of others in the institution.

(4) Upon conviction in a court of law for custodial assault as defined in RCW 9A.36.100, the department of social and health services review board shall conduct a

second hearing, within five judicial working days, to recommend to the secretary of the department of social and health services that the convicted juvenile be transferred to an adult correctional facility if the review board has determined the juvenile offender represents a continuing and serious threat to the safety of others in the institution.

The juvenile has the burden to show cause why the transfer to an adult correctional facility should not occur.

(5) A juvenile offender transferred to an institution operated by the department of corrections shall not remain in such an institution beyond the maximum term of confinement imposed by the juvenile court.

(6) A juvenile offender who has been transferred to the department of corrections under this section may, in the discretion of the secretary of the department of social and health services and with the consent of the secretary of the department of corrections, be transferred from an institution operated by the department of corrections to a facility for juvenile offenders deemed appropriate by the secretary. [1989 c 410 § 2; 1989 c 407 § 8; 1983 c 191 § 22.]

Reviser's note: This section was amended by 1989 c 407 § 8 and by 1989 c 410 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1)

Purpose—1989 c 410: "The legislature recognizes the ever-increasing severity of offenses committed by juvenile offenders residing in this state's juvenile detention facilities and the increasing aggressive nature of detained juveniles due to drugs and gang-related violence. The purpose of this act is to provide necessary protection to state employees and juvenile residents of these institutions from assaults committed against them by juvenile detainees." [1989 c 410 § 1.]

13.40.285 Juvenile offender sentenced to terms in juvenile and adult facilities—Transfer to department of corrections—Term of confinement. A juvenile offender ordered to serve a term of confinement with the department of social and health services who is subsequently sentenced to the department of corrections may, with the consent of the department of corrections, be transferred by the secretary of social and health services to the department of corrections to serve the balance of the term of confinement ordered by the juvenile court. The juvenile and adult sentences shall be served consecutively. In no case shall the secretary credit time served as a result of an adult conviction against the term of confinement ordered by the juvenile court. [1983 c 191 § 23.]

13.40.300 Commitment of juvenile beyond age twenty-one prohibited—Jurisdiction of juvenile court after juvenile's eighteenth birthday. (1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition; or

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday.

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older. [1994 sp.s. c 7 § 530; 1986 c 288 § 6; 1983 c 191 § 17; 1981 c 299 § 17; 1979 c 155 § 73; 1975 1st ex.s. c 170 § 1. Formerly RCW 13.04.260.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—1986 c 288: See note following RCW 13.32A.050.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.40.310 Transitional treatment program for gang and drug-involved juvenile offenders. (1) The department of social and health services may contract with a community-based nonprofit organization to establish a three-step transitional treatment program for gang and drug-involved juvenile offenders committed to the custody of the department under chapter 13.40 RCW. Any such program shall provide six to twenty-four months of treatment. The program shall emphasize the principles of self-determination, unity, collective work and responsibility, cooperative economics, and creativity. The program shall be culturally relevant and appropriate and shall include:

(a) A culturally relevant and appropriate institution-based program that provides comprehensive drug and alcohol services, individual and family counseling, and a wilderness experience of constructive group living, rigorous physical exercise, and academic studies;

(b) A culturally relevant and appropriate community-based structured group living program that focuses on individual goals, positive community involvement, coordinated drug and alcohol treatment, coordinated individual and family counseling, academic and vocational training, and employment in apprenticeship, internship, and entrepreneurial programs; and

(c) A culturally relevant and appropriate transitional group living program that provides support services, academic services, and coordinated individual and family counseling.

(2) Participation in any such program shall be on a voluntary basis.

(3) The department shall adopt rules as necessary to implement any such program. [1991 c 326 § 4.]

Finding—1991 c 326: "The legislature finds that a destructive lifestyle of drug and street gang activity is rapidly becoming prevalent among some of the state's youths. Gang and drug activity may be a culturally influenced phenomenon which the legislature intends public and private agencies to consider and address in prevention and treatment programs. Gang and drug-involved youths are more likely to become addicted to drugs or alcohol, live in poverty, experience high unemployment, be incarcerated, and die of violence than other youths." [1991 c 326 § 3.]

Part headings not law—Severability—1991 c 326: See RCW 71.36.900 and 71.36.901.

13.40.320 Juvenile offender basic training camp program. (1) The department of social and health services shall establish and operate a medium security juvenile offender basic training camp program. The department shall site a juvenile offender basic training camp facility in the most cost-effective facility possible and shall review the possibility of using an existing abandoned and/or available state, federally, or military-owned site or facility.

(2) The department may contract under this chapter with private companies, the national guard, or other federal, state, or local agencies to operate the juvenile offender basic training camp, notwithstanding the provisions of RCW 41.06.380. Requests for proposals from possible contractors shall not call for payment on a per diem basis.

(3) The juvenile offender basic training camp shall accommodate at least seventy offenders. The beds shall count as additions to, and not be used as replacements for, existing bed capacity at existing department of social and health services juvenile facilities.

(4) The juvenile offender basic training camp shall be a structured and regimented model lasting one hundred twenty days emphasizing the building up of an offender's self-esteem, confidence, and discipline. The juvenile offender basic training camp program shall provide participants with basic education, prevocational training, work-based learning, live work, work ethic skills, conflict resolution counseling, substance abuse intervention, anger management counseling, and structured intensive physical training. The juvenile offender basic training camp program shall have a curriculum training and work schedule that incorporates a balanced assignment of these or other rehabilitation and training components for no less than sixteen hours per day, six days a week.

The department shall adopt rules for the safe and effective operation of the juvenile offender basic training camp program, standards for an offender's successful program completion, and rules for the continued after-care supervision of offenders who have successfully completed the program.

(5) Offenders eligible for the juvenile offender basic training camp option shall be those with a disposition of not more than sixty-five weeks. Violent and sex offenders shall not be eligible for the juvenile offender basic training camp program.

(6) If the court determines that the offender is eligible for the juvenile offender basic training camp option, the court may recommend that the department place the offender in the program. The department shall evaluate the offender and may place the offender in the program. The evaluation

shall include, at a minimum, a risk assessment developed by the department and designed to determine the offender's suitability for the program. No juvenile who is assessed as a high risk offender or suffers from any mental or physical problems that could endanger his or her health or drastically affect his or her performance in the program shall be admitted to or retained in the juvenile offender basic training camp program.

(7) All juvenile offenders eligible for the juvenile offender basic training camp sentencing option shall spend one hundred twenty days of their disposition in a juvenile offender basic training camp. If the juvenile offender's activities while in the juvenile offender basic training camp are so disruptive to the juvenile offender basic training camp program, as determined by the secretary according to rules adopted by the department, as to result in the removal of the juvenile offender from the juvenile offender basic training camp program, or if the offender cannot complete the juvenile offender basic training camp program due to medical problems, the secretary shall require that the offender be committed to a juvenile institution to serve the entire remainder of his or her disposition, less the amount of time already served in the juvenile offender basic training camp program.

(8) All offenders who successfully graduate from the one hundred twenty day juvenile offender basic training camp program shall spend the remainder of their disposition on parole in a division of juvenile rehabilitation intensive aftercare program in the local community. The program shall provide for the needs of the offender based on his or her progress in the aftercare program as indicated by ongoing assessment of those needs and progress. The intensive aftercare program shall monitor postprogram juvenile offenders and assist them to successfully reintegrate into the community. In addition, the program shall develop a process for closely monitoring and assessing public safety risks. The intensive aftercare program shall be designed and funded by the department of social and health services.

(9) The department shall also develop and maintain a data base to measure recidivism rates specific to this incarceration program. The data base shall maintain data on all juvenile offenders who complete the juvenile offender basic training camp program for a period of two years after they have completed the program. The data base shall also maintain data on the criminal activity, educational progress, and employment activities of all juvenile offenders who participated in the program. [1997 c 338 § 38; 1995 c 40 § 1; 1994 sp.s. c 7 § 532.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Findings and intent—Juvenile basic training camps—1994 sp.s. c 7: "The legislature finds that the number of juvenile offenders and the severity of their crimes is increasing rapidly state-wide. In addition, many juvenile offenders continue to reoffend after they are released from the juvenile justice system causing disproportionately high and expensive rates of recidivism.

The legislature further finds that juvenile criminal behavior is often the result of a lack of self-discipline, the lack of systematic work habits and ethics, the inability to deal with authority figures, and an unstable or unstructured living environment. The legislature further finds that the department of social and health services currently operates an insufficient number of confinement beds to meet the rapidly growing juvenile offender

population. Together these factors are combining to produce a serious public safety hazard and the need to develop more effective and stringent juvenile punishment and rehabilitation options.

The legislature intends that juvenile offenders who enter the state rehabilitation system have the opportunity and are given the responsibility to become more effective participants in society by enhancing their personal development, work ethics, and life skills. The legislature recognizes that structured incarceration programs for juvenile offenders such as juvenile offender basic training camps, can instill the self-discipline, accountability, self-esteem, and work ethic skills that could discourage many offenders from returning to the criminal justice system. Juvenile offender basic training camp incarceration programs generally emphasize life skills training, prevocational work skills training, anger management, dealing with difficult at-home family problems and/or abuses, discipline, physical training, structured and intensive work activities, and educational classes. The legislature further recognizes that juvenile offenders can benefit from a highly structured basic training camp environment and the public can also benefit through increased public protection and reduced cost due to lowered rates of recidivism." [1994 sp.s. c 7 § 531.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.400 Applicability of RCW 10.01.040 to chapter. The provisions of RCW 10.01.040 apply to chapter 13.40 RCW. [1979 c 155 § 74.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.40.430 Disparity in disposition of juvenile offenders—Data collection—Annual report. The department shall within existing funds collect such data as may be necessary to monitor any disparity in processing or disposing of cases involving juvenile offenders due to economic, gender, geographic, or racial factors that may result from implementation of section 1, chapter 373, Laws of 1993. Beginning December 1, 1993, the department shall report annually to the legislature on economic, gender, geographic, or racial disproportionality in the rates of arrest, detention, trial, treatment, and disposition in the state's juvenile justice system. The report shall cover the preceding calendar year. The annual report shall identify the causes of such disproportionality and shall specifically point out any economic, gender, geographic, or racial disproportionality resulting from implementation of section 1, chapter 373, Laws of 1993. [1993 c 373 § 2.]

Severability—1993 c 373: See note following RCW 13.40.020.

13.40.440 Chapter 9.92 RCW not to affect dispositions under juvenile justice act. See RCW 9.92.200.

13.40.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders. See RCW 13.04.450.

13.40.460 Juvenile rehabilitation programs—Administration. The secretary, assistant secretary, or the secretary's designee shall manage and administer the department's juvenile rehabilitation responsibilities, including but not limited to the operation of all state institutions or facilities used for juvenile rehabilitation.

The secretary or assistant secretary shall:

(1) Prepare a biennial budget request sufficient to meet the confinement and rehabilitative needs of the juvenile

rehabilitation program, as forecast by the office of financial management;

(2) Create by rule a formal system for inmate classification. This classification system shall consider:

(a) Public safety;

(b) Internal security and staff safety;

(c) Rehabilitative resources both within and outside the department;

(d) An assessment of each offender's risk of sexually aggressive behavior as provided in RCW 13.40.470; and

(e) An assessment of each offender's vulnerability to sexually aggressive behavior as provided in RCW 13.40.470;

(3) Develop agreements with local jurisdictions to develop regional facilities with a variety of custody levels;

(4) Adopt rules establishing effective disciplinary policies to maintain order within institutions;

(5) Develop a comprehensive diagnostic evaluation process to be used at intake, including but not limited to evaluation for substance addiction or abuse, literacy, learning disabilities, fetal alcohol syndrome or effect, attention deficit disorder, and mental health;

(6) Develop placement criteria:

(a) To avoid assigning youth who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as youth assessed as vulnerable to sexual victimization under RCW 13.40.470(1)(c); and

(b) To avoid placing a juvenile offender on parole status who has been assessed as a moderate to high risk for sexually aggressive behavior in a department community residential program with another child who is: (i) Dependent under chapter 13.34 RCW, or an at-risk youth or child in need of services under chapter 13.32A RCW; and (ii) not also a juvenile offender on parole status;

(7) Develop a plan to implement, by July 1, 1995:

(a) Substance abuse treatment programs for all state juvenile rehabilitation facilities and institutions;

(b) Vocational education and instruction programs at all state juvenile rehabilitation facilities and institutions; and

(c) An educational program to establish self-worth and responsibility in juvenile offenders. This educational program shall emphasize instruction in character-building principles such as: Respect for self, others, and authority; victim awareness; accountability; work ethics; good citizenship; and life skills; and

(8) Study, in conjunction with the superintendent of public instruction, educators, and superintendents of state facilities for juvenile offenders, the feasibility and value of consolidating within a single entity the provision of educational services to juvenile offenders committed to state facilities. The assistant secretary shall report his or her findings to the legislature by December 1, 1995. [1997 c 386 § 54; 1994 sp.s. c 7 § 516.]

Implementation deadline—1997 c 386 § 54: "The policy developed under RCW 13.40.460(6)(b) shall be implemented within the juvenile rehabilitation administration and the division of children and family services by July 1, 1998." [1997 c 386 § 55.]

Finding—Intent—1997 c 386 §§ 50-55: See note following RCW 13.40.470.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.470 Vulnerable youth committed to residential facilities—Protection from sexually aggressive youth—Assessment process. (1) The department shall implement a policy for protecting youth committed to state-operated or state-funded residential facilities under this chapter who are vulnerable to sexual victimization by other youth committed to those facilities who are sexually aggressive. The policy shall include, at a minimum, the following elements:

(a) Development and use of an assessment process for identifying youth, within thirty days of commitment to the department, who present a moderate or high risk of sexually aggressive behavior for the purposes of this section. The assessment process need not require that every youth who is adjudicated or convicted of a sex offense as defined in RCW 9.94A.030 be determined to be sexually aggressive, nor shall a sex offense adjudication or conviction be required in order to determine a youth is sexually aggressive. Instead, the assessment process shall consider the individual circumstances of the youth, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to sexual aggressiveness. The definition of "sexually aggressive youth" in RCW 74.13.075 does not apply to this section to the extent that it conflicts with this section;

(b) Development and use of an assessment process for identifying youth, within thirty days of commitment to the department, who may be vulnerable to victimization by youth identified under (a) of this subsection as presenting a moderate or high risk of sexually aggressive behavior. The assessment process shall consider the individual circumstances of the youth, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to vulnerability;

(c) Development and use of placement criteria to avoid assigning youth who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as youth assessed as vulnerable to sexual victimization, except that they may be assigned to the same multiple-person sleeping quarters if those sleeping quarters are regularly monitored by visual surveillance equipment or staff checks;

(d) Development and use of procedures for minimizing, within available funds, unsupervised contact in state-operated or state-funded residential facilities between youth presenting moderate to high risk of sexually aggressive behavior and youth assessed as vulnerable to sexual victimization. The procedures shall include taking reasonable steps to prohibit any youth committed under this chapter who present a moderate to high risk of sexually aggressive behavior from entering any sleeping quarters other than the one to which they are assigned, unless accompanied by an authorized adult.

(2) For the purposes of this section, the following terms have the following meanings:

(a) "Sleeping quarters" means the bedrooms or other rooms within a residential facility where youth are assigned to sleep.

(b) "Unsupervised contact" means contact occurring outside the sight or hearing of a responsible adult for more than a reasonable period of time under the circumstances. [1997 c 386 § 50.]

Finding—Intent—1997 c 386 §§ 50-55: "The legislature finds that the placement of children and youth in state-operated or state-funded residential facilities must be done in such a manner as to protect children who are vulnerable to sexual victimization from youth who are sexually aggressive. To achieve this purpose, the legislature intends the department of social and health services to develop a policy for assessing sexual aggressiveness and vulnerability to sexual victimization of children and youth who are placed in state-operated or state-funded residential facilities." [1997 c 386 § 49.]

13.40.480 Student records and information—Reasons for release—Who may request. (1) Pursuant to RCW 28A.600.475, and to the extent permitted by the family educational and privacy rights act of 1974, 20 U.S.C. Sec. 1232g(b), and in order to serve the juvenile while in detention and to prepare any postconviction services, schools shall make all student records and information necessary for risk assessment, security classification, and placement available to court personnel and the department within three working days of a request under this section.

(2)(a) When a juvenile has one or more prior convictions, a request for records shall be made by the county prosecuting attorney, or probation department if available, to the school not more than ten days following the juvenile's arrest or detention, whichever occurs later, and prior to trial. The request may be made by subpoena.

(b) Where a juvenile has no prior conviction, a request to release records shall be made by subpoena upon the juvenile's conviction. When the request for a juvenile's student records and information is made by subpoena following conviction, the court or other issuing agency shall order the school on which the subpoena is served not to disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena. When the court or issuing agency so orders, the school shall not provide notice to the juvenile or his or her parents. [1998 c 269 § 12.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

13.40.500 Community juvenile accountability programs—Findings—Purpose. The legislature finds that meaningful community involvement is vital to the juvenile justice system's ability to respond to the serious problem of juvenile crime. Citizens and crime victims need to be active partners in responding to crime, in the management of resources, and in the disposition decisions regarding juvenile offenders in their community. Involvement of citizens and crime victims increase offender accountability and build healthier communities, which will reduce recidivism and crime rates in Washington state.

The legislature also finds that local governments are in the best position to develop, coordinate, and manage local community prevention, intervention, and corrections programs for juvenile offenders, and to determine local resource priorities. Local community management will build upon local values and increase local control of resources, encourage the use of a comprehensive range of community-based intervention strategies.

The primary purpose of RCW 13.40.500 through 13.40.540, the community juvenile accountability act, is to provide a continuum of community-based programs that emphasize the juvenile offender's accountability for his or her

actions while assisting him or her in the development of skills necessary to function effectively and positively in the community in a manner consistent with public safety. [1997 c 338 § 60.]

Evaluation—Report—1997 c 338 §§ 60-64: "The Washington state institute for public policy shall evaluate the costs and benefits of the programs funded in sections 60 through 64 of this act. The evaluation must measure whether the programs cost-effectively reduce recidivism and crime rates in Washington state. The institute shall submit reports to the governor and the legislature by December 1, 1998, and December 1, 2000." [1997 c 338 § 65.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.510 Community juvenile accountability programs—Establishment—Proposals—Guidelines. (1) In order to receive funds under RCW 13.40.500 through 13.40.540, local governments may, through their respective agencies that administer funding for consolidated juvenile services, submit proposals that establish community juvenile accountability programs within their communities. These proposals must be submitted to the juvenile rehabilitation administration of the department of social and health services for certification.

(2) The proposals must:

(a) Demonstrate that the proposals were developed with the input of the community public health and safety networks established under RCW 70.190.060, and the local law and justice councils established under RCW 72.09.300;

(b) Describe how local community groups or members are involved in the implementation of the programs funded under RCW 13.40.500 through 13.40.540;

(c) Include a description of how the grant funds will contribute to the expected outcomes of the program and the reduction of youth violence and juvenile crime in their community. Data approaches are not required to be replicated if the networks have information that addresses risks in the community for juvenile offenders.

(3) A local government receiving a grant under this section shall agree that any funds received must be used efficiently to encourage the use of community-based programs that reduce the reliance on secure confinement as the sole means of holding juvenile offenders accountable for their crimes. The local government shall also agree to account for the expenditure of all funds received under the grant and to submit to audits for compliance with the grant criteria developed under RCW 13.40.520.

(4) The juvenile rehabilitation administration, in consultation with the Washington association of juvenile court administrators, the state law and justice advisory council, and the family policy council, shall establish guidelines for programs that may be funded under RCW 13.40.500 through 13.40.540. The guidelines must:

(a) Target diverted and adjudicated juvenile offenders;

(b) Include assessment methods to determine services, programs, and intervention strategies most likely to change behaviors and norms of juvenile offenders;

(c) Provide maximum structured supervision in the community. Programs should use natural surveillance and community guardians such as employers, relatives, teachers,

clergy, and community mentors to the greatest extent possible;

(d) Promote good work ethic values and educational skills and competencies necessary for the juvenile offender to function effectively and positively in the community;

(e) Maximize the efficient delivery of treatment services aimed at reducing risk factors associated with the commission of juvenile offenses;

(f) Maximize the reintegration of the juvenile offender into the community upon release from confinement;

(g) Maximize the juvenile offender's opportunities to make full restitution to the victims and amends to the community;

(h) Support and encourage increased court discretion in imposing community-based intervention strategies;

(i) Be compatible with research that shows which prevention and early intervention strategies work with juvenile offenders;

(j) Be outcome-based in that it describes what outcomes will be achieved or what outcomes have already been achieved;

(k) Include an evaluation component; and

(l) Recognize the diversity of local needs.

(5) The state law and justice advisory council, with the assistance of the family policy council and the governor's juvenile justice advisory committee, may provide support and technical assistance to local governments for training and education regarding community-based prevention and intervention strategies. [1997 c 338 § 61.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Evaluation—Report—1997 c 338 §§ 60-64: See note following RCW 13.40.500.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.520 Community juvenile accountability programs—Grants. (1) The state may make grants to local governments for the provision of community-based programs for juvenile offenders. The grants must be made under a grant formula developed by the juvenile rehabilitation administration, in consultation with the Washington association of juvenile court administrators.

(2) Upon certification by the juvenile rehabilitation administration that a proposal satisfies the application and selection criteria, grant funds will be distributed to the local government agency that administers funding for consolidated juvenile services. [1997 c 338 § 62.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Evaluation—Report—1997 c 338 §§ 60-64: See note following RCW 13.40.500.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.530 Community juvenile accountability programs—Effectiveness standards. The legislature recognizes the importance of evaluation and outcome measurements of programs serving juvenile offenders in order to ensure cost-effective use of public funds.

The Washington state institute for public policy shall develop standards for measuring the effectiveness of juvenile accountability programs established and approved under

RCW 13.40.510. The standards must be developed and presented to the governor and legislature not later than January 1, 1998. The standards must include methods for measuring success factors following intervention. Success factors include, but are not limited to, continued use of alcohol or controlled substances, arrests, violations of terms of community supervision, convictions for subsequent offenses, and restitution to victims. [1997 c 338 § 63.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Evaluation—Report—1997 c 338 §§ 60-64: See note following RCW 13.40.500.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.540 Community juvenile accountability programs—Information collection—Report. (1) Each community juvenile accountability program approved and funded under RCW 13.40.500 through 13.40.540 shall comply with the information collection requirements in subsection (2) of this section and the reporting requirements in subsection (3) of this section.

(2) The information collected by each community juvenile accountability program must include, at a minimum for each juvenile participant: (a) The name, date of birth, gender, social security number, and, when available, the juvenile information system (JUVIS) control number; (b) an initial intake assessment of each juvenile participating in the program; (c) a list of all juveniles who completed the program; and (d) an assessment upon completion or termination of each juvenile, including outcomes and, where applicable, reasons for termination.

(3) The juvenile rehabilitation administration shall annually compile the data and report to the legislature on: (a) The programs funded under RCW 13.40.500 through 13.40.540; (b) the total cost for each funded program and cost per juvenile; and (c) the essential elements of the program. [1997 c 338 § 64.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Evaluation—Report—1997 c 338 §§ 60-64: See note following RCW 13.40.500.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.550 Community juvenile accountability programs—Short title. RCW 13.40.500 through 13.40.540 may be known as the community juvenile accountability act. [1997 c 338 § 66.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Chapter 13.50

KEEPING AND RELEASE OF RECORDS BY JUVENILE JUSTICE OR CARE AGENCIES

Sections

13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access.

13.50.050 Records relating to commission of juvenile offenses—Maintenance of and access or destruction.

13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access.

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13.50.160 Disposition records—Provision to schools.

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13.50.250 Records chapter applicable to.

Office of family and children's ombudsman: Chapter 43.06A RCW.

13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access. (1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of family and children's ombudsman, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(d) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. The court may also permit inspection of, or release of information from, records which have been sealed pursuant to RCW 13.50.050(11). The court shall release to the sentencing guidelines commission records needed for its research and data-gathering functions under RCW 9.94A.040 and other statutes. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the sentencing guidelines commission under RCW 9.94A.040 upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(10) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombudsman. [1998 c 269 § 4. Prior: 1997 c 386 § 21; 1997 c 338 § 39; 1996 c 232 § 6; 1994 sp.s. c 7 § 541; 1993 c 374 § 1; 1990 c 246 § 8; 1986 c 288 § 11; 1979 c 155 § 8.]

Alphabetization—1998 c 269: "The code reviser shall alphabetize the definitions in RCW 13.50.010 and 74.15.020 and correct any references." [1998 c 269 § 18.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Effective dates—1996 c 232: See note following RCW 9.94A.040.

Application—1994 sp.s. c 7 §§ 540-545: "Sections 540 through 545 of this act shall apply to offenses committed on or after July 1, 1994." [1994 sp.s. c 7 § 917.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—1990 c 246: See note following RCW 13.34.060.

Severability—1986 c 288: See note following RCW 13.32A.050.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.50.050 Records relating to commission of juvenile offenses—Maintenance of and access or destruction. (1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (11) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) The juvenile court and the prosecutor may set up and maintain a central record-keeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central record-keeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(8) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(9) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections

system shall be released upon request to the adult corrections system.

(10) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (22) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(11) The court shall grant the motion to seal records made pursuant to subsection (10) of this section if it finds that:

(a) For class B offenses other than sex offenses, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent ten consecutive years in the community without committing any offense or crime that subsequently results in conviction. For class C offenses other than sex offenses, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in conviction;

(b) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(c) No proceeding is pending seeking the formation of a diversion agreement with that person;

(d) The person has not been convicted of a class A or sex offense; and

(e) Full restitution has been paid.

(12) The person making a motion pursuant to subsection (10) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(13) If the court grants the motion to seal made pursuant to subsection (10) of this section, it shall, subject to subsection (22) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(14) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection (22) of this section.

(15) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW.

(16) A person eighteen years of age or older whose criminal history consists of only one referral for diversion may request that the court order the records in that case

destroyed. The request shall be granted, subject to subsection (22) of this section, if the court finds that two years have elapsed since completion of the diversion agreement.

(17) If the court grants the motion to destroy records made pursuant to subsection (16) of this section, it shall, subject to subsection (22) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(18) The person making the motion pursuant to subsection (16) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(19) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(20) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(21) Any juvenile justice or care agency may, subject to the limitations in subsection (22) of this section and (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older, or is eighteen years of age or older and his or her criminal history consists entirely of one diversion agreement and two years have passed since completion of the agreement.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

(22) No identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

(23) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault. [1997 c 338 § 40; 1992 c 188 § 7; 1990 c 3 § 125; 1987 c 450 § 8; 1986 c 257 § 33; 1984 c 43 § 1; 1983 c 191 § 19; 1981 c 299 § 19; 1979 c 155 § 9.]

Rules of court: Superior Court Criminal Rules (CrR), generally. Discovery: CrR 4.7.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access. (1) This section governs records not covered by RCW 13.50.050.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the state-wide juvenile court information system.

(4) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

(5) A juvenile or his or her parent denied access to any records following an agency determination under subsection (4) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the

motion unless it finds access may not be permitted according to the standards found in subsections (4)(a) and (b) of this section.

(6) The person making a motion under subsection (5) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(7) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (4) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied. [1997 c 386 § 22; 1995 c 311 § 16; 1990 c 246 § 9; 1983 c 191 § 20; 1979 c 155 § 10.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.50.150 Confidential records—Expungement to protect due process rights. Nothing in this chapter shall be construed to prevent the expungement of any juvenile record ordered expunged by a court to preserve the due process rights of its subject. [1977 ex.s. c 291 § 13. Formerly RCW 13.04.276, see 1979 c 155 § 12.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective date—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.50.160 Disposition records—Provision to schools. Records of disposition for a juvenile offense must be provided to schools as provided in RCW 13.04.155. [1997 c 266 § 8.]

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

13.50.200 Records of motor vehicle operation violation forwarded. Notwithstanding any other provision of this chapter, 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 court shall be forwarded by the juvenile court to the department of licensing in the same manner as provided in RCW 46.20.270. [1979 c 155 § 13; 1977 ex.s. c 291 § 14. Formerly RCW 13.04.278.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective date—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.50.250 Records chapter applicable to. This chapter applies to all juvenile justice or care agency records created on or after July 1, 1978. [1979 c 155 § 11.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Chapter 13.60

MISSING CHILDREN CLEARINGHOUSE

Sections

- 13.60.010 Missing children clearinghouse—Hot line—Distribution of information.
 13.60.020 Entry of information on missing children into missing person computer network—Access.
 13.60.030 Information and education regarding missing children—Plan.

13.60.010 Missing children clearinghouse—Hot line—Distribution of information. The Washington state patrol shall establish a missing children clearinghouse which shall include the maintenance and operation of a toll-free, twenty-four-hour telephone hotline. The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of social and health services, and the general public regarding missing children. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children. The state patrol shall also maintain a regularly updated computerized link with national and other state-wide missing person systems or clearinghouses.

"Child" or "children," as used in this chapter, means an individual under eighteen years of age. [1985 c 443 § 22.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

13.60.020 Entry of information on missing children into missing person computer network—Access. Local law enforcement agencies shall file an official missing person report and enter biographical information into the state missing person computerized network within twelve hours after notification of a missing child is received under *RCW 13.32A.050 (1), (3), or (4). The patrol shall collect such information as will enable it to retrieve immediately the following information about a missing child: Name, date of birth, social security number, fingerprint classification, relevant physical descriptions, and known associates and locations. Access to the preceding information shall be available to appropriate law enforcement agencies, and to parents and legal guardians, when appropriate. [1985 c 443 § 23.]

***Reviser's note:** RCW 13.32A.050 was amended by 1995 c 312 § 6, changing subsections (1), (3), and (4) to subsection (1)(a), (c), and (d), respectively.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

13.60.030 Information and education regarding missing children—Plan. The superintendent of public instruction shall meet semiannually with the Washington state patrol to develop a coordinated plan for the distribution of information and education of teachers and students in the school districts of the state regarding the missing children problem in the state. The superintendent of public instruction shall encourage local school districts to cooperate by providing the state patrol information on any missing

children that may be identified within the district. [1985 c 443 § 24.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Chapter 13.64

EMANCIPATION OF MINORS

Sections

- 13.64.010 Declaration of emancipation.
 13.64.020 Petition for emancipation—Filing fees.
 13.64.030 Service of petition—Notice—Date of hearing.
 13.64.040 Hearing on petition.
 13.64.050 Emancipation decree—Certified copy—Notation of emancipated status.
 13.64.060 Power and capacity of emancipated minor.
 13.64.070 Declaration of emancipation—Voidable.
 13.64.080 Forms to initiate petition of emancipation.
 13.64.900 Effective date—1993 c 294.

13.64.010 Declaration of emancipation. Any minor who is sixteen years of age or older and who is a resident of this state may petition in the superior court for a declaration of emancipation. [1993 c 294 § 1.]

13.64.020 Petition for emancipation—Filing fees.
 (1) A petition for emancipation shall be signed and verified by the petitioner, and shall include the following information: (a) The full name of the petitioner, the petitioner's birthdate, and the state and county of birth; (b) a certified copy of the petitioner's birth certificate; (c) the name and last known address of the petitioner's parent or parents, guardian, or custodian; (d) the petitioner's present address, and length of residence at that address; (e) a declaration by the petitioner indicating that he or she has the ability to manage his or her financial affairs, including any supporting information; and (f) a declaration by the petitioner indicating that he or she has the ability to manage his or her personal, social, educational, and nonfinancial affairs, including any supporting information.

(2) Fees for this section are set under RCW 36.18.014. [1995 c 292 § 7; 1993 c 294 § 2.]

13.64.030 Service of petition—Notice—Date of hearing. The petitioner shall serve a copy of the filed petition and notice of hearing on the petitioner's parent or parents, guardian, or custodian at least fifteen days before the emancipation hearing. No summons shall be required. Service shall be waived if proof is made to the court that the address of the parent or parents, guardian, or custodian is unavailable or unascertainable. The petitioner shall also serve notice of the hearing on the department if the petitioner is subject to dependency disposition order under RCW 13.34.130. The hearing shall be held no later than sixty days after the date on which the petition is filed. [1993 c 294 § 3.]

13.64.040 Hearing on petition. The hearing on the petition shall be before a judge, sitting without a jury. Prior to the presentation of proof the judge shall determine whether: (1) The petitioning minor understands the consequences of the petition regarding his or her legal rights and

responsibilities; (2) a guardian ad litem should be appointed to investigate the allegations of the petition and file a report with the court. [1993 c 294 § 4.]

13.64.050 Emancipation decree—Certified copy—Notation of emancipated status. (1) The court shall grant the petition for emancipation, except as provided in subsection (2) of this section, if the petitioner proves the following facts by clear and convincing evidence: (a) That the petitioner is sixteen years of age or older; (b) that the petitioner is a resident of the state; (c) that the petitioner has the ability to manage his or her financial affairs; and (d) that the petitioner has the ability to manage his or her personal, social, educational, and nonfinancial affairs.

(2) A parent, guardian, custodian, or in the case of a dependent minor, the department, may oppose the petition for emancipation. The court shall deny the petition unless it finds, by clear and convincing evidence, that denial of the grant of emancipation would be detrimental to the interests of the minor.

(3) Upon entry of a decree of emancipation by the court the petitioner shall be given a certified copy of the decree. The decree shall instruct the petitioner to obtain a Washington driver's license or a Washington identification card and direct the department of licensing make a notation of the emancipated status on the license or identification card. [1993 c 294 § 5.]

13.64.060 Power and capacity of emancipated minor. (1) An emancipated minor shall be considered to have the power and capacity of an adult, except as provided in subsection (2) of this section. A minor shall be considered emancipated for the purposes of, but not limited to:

- (a) The termination of parental obligations of financial support, care, supervision, and any other obligation the parent may have by virtue of the parent-child relationship, including obligations imposed because of marital dissolution;
- (b) The right to sue or be sued in his or her own name;
- (c) The right to retain his or her own earnings;
- (d) The right to establish a separate residence or domicile;
- (e) The right to enter into nonvoidable contracts;
- (f) The right to act autonomously, and with the power and capacity of an adult, in all business relationships, including but not limited to property transactions;
- (g) The right to work, and earn a living, subject only to the health and safety regulations designed to protect those under age of majority regardless of their legal status; and
- (h) The right to give informed consent for receiving health care services.

(2) An emancipated minor shall not be considered an adult for: (a) The purposes of the adult criminal laws of the state unless the decline of jurisdiction procedures contained in RCW 13.40.110 are used or the minor is tried in criminal court pursuant to *RCW 13.04.030(1)(e)(iv); (b) the criminal laws of the state when the emancipated minor is a victim and the age of the victim is an element of the offense; or (c) those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, possession of firearms, and other health and safety regulations relevant to

the minor because of the minor's age. [1994 sp.s. c 7 § 436; 1993 c 294 § 6.]

*Reviser's note: RCW 13.04.030 was amended by 1997 c 341 § 3, changing subsection (1)(e)(iv) to subsection (1)(e)(v).

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

13.64.070 Declaration of emancipation—Voidable. A declaration of emancipation obtained by fraud is voidable. The voiding of any such declaration shall not affect any obligations, rights, or interests that arose during the period the declaration was in effect. [1993 c 294 § 7.]

13.64.080 Forms to initiate petition of emancipation. The office of the administrator for the courts shall prepare and distribute to the county court clerks appropriate forms for minors seeking to initiate a petition of emancipation. [1993 c 294 § 8.]

13.64.900 Effective date—1993 c 294. This act shall take effect January 1, 1994. [1993 c 294 § 11.]

Chapter 13.70

SUBSTITUTE CARE OF CHILDREN—REVIEW BOARD SYSTEM

Sections

- 13.70.003 Substitute care of children—Citizen review board system—Purpose—Application of administrative procedures and standards.
- 13.70.010 Definitions.
- 13.70.020 Role of supreme court—Procedures.
- 13.70.030 Composition of board—Quorum.
- 13.70.040 Guidelines for appointment to boards.
- 13.70.050 Training programs for board members.
- 13.70.060 Confidentiality requirements.
- 13.70.070 Board access to records.
- 13.70.080 Review of case—Employee duties.
- 13.70.090 Board—Powers and duties—Immunity.
- 13.70.100 Child in substitute care—No dependency petition—Procedures—Review.
- 13.70.110 Child in substitute care under dependency proceeding—Procedures—Review.
- 13.70.120 Board recommendations.
- 13.70.130 Funds from public and private sources.
- 13.70.140 Review by court.
- 13.70.150 Indian children—Local Indian child welfare advisory committee may serve as citizen review board.

13.70.003 Substitute care of children—Citizen review board system—Purpose—Application of administrative procedures and standards. The legislature recognizes the importance of permanency and continuity to children and of fairness to parents in the provision of child welfare services.

The legislature intends to create a citizen review board system that will function in an advisory capacity to the judiciary, the department, and the legislature. The purpose of the citizen review board system is to:

- (1) Provide periodic review of cases involving substitute care of children in a manner that complies with case review

requirements and time lines imposed by federal laws pertaining to child welfare services;

(2) Improve the quality of case review provided to children in substitute care and their families; and

(3) Provide a means for community involvement in monitoring cases of children in substitute care.

In order to accomplish the foregoing purposes, the citizen review board system shall not be subject to the procedures and standards usually applicable to judicial and administrative hearings, except as otherwise specifically provided in this chapter and RCW 13.34.130, 13.34.145, and 26.44.115. Nothing in this chapter and RCW 13.34.130, 13.34.145, and 26.44.115 shall limit the ability of the department to utilize court review hearings and administrative reviews to meet the periodic review requirements imposed by federal law. [1989 1st ex.s. c 17 § 1.]

13.70.010 Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the local citizen review board established pursuant to this chapter.

(2) "Child" means a person less than eighteen years of age.

(3) "Committee" means a local Indian child welfare advisory committee established pursuant to WAC 388-70-610, as now existing or hereafter amended by the department.

(4) "Conflict of interest" means that a person appointed to a board has a personal or pecuniary interest in a case being reviewed by that board.

(5) "Court" means the juvenile court.

(6) "Custodian" means that person who has legal custody of the child.

(7) "Department" means the department of social and health services.

(8) "Mature child" means a child who is able to understand and participate in the decision-making process without excessive anxiety or fear. A child twelve years old or over shall be rebuttably presumed to be a mature child.

(9) "Parent" or "parents" means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings.

(10) "Placement episode" means the period of time that begins with the date the child was removed from the home of the parent or legal custodian for the purposes of placement in substitute care and continues until the child returns home or an adoption decree or guardianship order is entered.

(11) "Records" means any information in written form, pictures, photographs, charts, graphs, recordings, or documents pertaining to a case.

(12) "Resides" or "residence," when used in reference to the residence of a child, means the place where the child is actually living and not the legal residence or domicile of the parent or guardian.

(13) "Substitute care" means an out-of-home placement of a child for purposes related to the provision of child welfare services in accordance with chapter 74.13 RCW where the child is in the care, custody, and control of the department pursuant to a proceeding under chapter 13.34

RCW or pursuant to the written consent of the child's parent or parents or custodian. [1991 c 127 § 3; 1989 1st ex.s. c 17 § 3.]

13.70.020 Role of supreme court—Procedures. The supreme court is requested to:

(1) Establish and approve policies and procedures for the creation, recruitment, and operation of local citizen substitute care review boards;

(2) Approve and cause to have conducted training programs for board members;

(3) Provide consultation services on request to the boards;

(4) Establish reporting procedures to be followed by the boards to provide data for the evaluation of this chapter;

(5) Monitor the boards to ensure the impartiality of reviews and consistency of review standards throughout the state;

(6) Employ staff and provide for support services for the boards which shall be provided with staff through the local juvenile court in accordance with guidelines and procedures established by the supreme court;

(7) Direct the administrator for the courts to carry out duties prescribed by the supreme court relating to the administration of this chapter;

(8) Submit a report to the governor, the appropriate committees of the legislature, and the public on January 1, 1991, and biennially thereafter. The report shall address the following issues:

(a) State laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department and other agencies;

(b) Whether the boards are effective in bringing about permanence and appropriate care for children in the custody of the department and other agencies; and

(c) Whether adequate resources are available to permit the department to make reasonable efforts to keep families together.

(9) Adopt rules regarding:

(a) Procedures for providing written notice of the review to the department, any other child placement agency directly responsible for supervising the placement of the child, the child's parents and their attorneys, the child's legal custodians and their attorneys, mature children and their attorneys, the court-appointed attorney and guardian ad litem of any child, any prosecuting attorney or attorney general actively involved in the case, and the child's Indian tribe if the child is an Indian as defined in the Indian child welfare act, 25 U.S.C. 1901, et seq. The notice shall include advice that persons receiving a notice may participate in the review and be accompanied by a representative;

(b) Procedures for removing members from the board for nonparticipation or other good cause. [1989 1st ex.s. c 17 § 4.]

13.70.030 Composition of board—Quorum. Each board shall be composed of five members appointed by the juvenile court. Three members shall constitute a quorum. [1989 1st ex.s. c 17 § 5.]

13.70.040 Guidelines for appointment to boards.

Each board shall be appointed according to the following guidelines:

(1) Members of each board shall represent the various socioeconomic and ethnic groups of the area served.

(2) No person employed by a juvenile court or by the department for purposes related to the provision of child welfare services under chapter 74.13 RCW may serve on any board. No more than one person from any private agency or individual licensed by the department to provide child welfare services under chapter 74.13 RCW may serve on any board. A majority of the members on each board shall be persons who have no current professional or volunteer relationship with the department.

(3) No person who has had a child of his or her own, or one under his or her control, placed in substitute care within the last two years may serve on any board.

(4) All board members must be of good character and must demonstrate the understanding, ability, and judgment necessary to carry out the duties under this chapter.

(5) All board members shall serve a term of two years, except that if a vacancy occurs, a successor shall be appointed to serve the unexpired term. The terms of the initial members shall be staggered. Members shall be limited to two terms unless there are insufficient volunteers to replace them.

(6) Each board shall elect annually from its membership a chair and vice-chair to serve in the absence of the chair.

(7) Board members shall be domiciled within the counties of the appointing courts. [1989 1st ex.s. c 17 § 6.]

13.70.050 Training programs for board members.

Prior to reviewing cases, all persons appointed to serve as board members shall participate in a training program established and approved by the supreme court. Board members shall participate in at least sixteen hours of training prior to reviewing cases and, thereafter, at least eight hours of training annually. [1989 1st ex.s. c 17 § 7.]

13.70.060 Confidentiality requirements.

(1) Before beginning to serve on a board, each member shall swear or affirm to the court that the member shall keep confidential the information reviewed by the board and its actions and recommendations in individual cases.

(2) A member of a board who violates the duty imposed by subsection (1) of this section is subject to dismissal from the board and other penalties as provided by law. [1989 1st ex.s. c 17 § 8.]

13.70.070 Board access to records.

Each board shall have access to the following information unless disclosure is otherwise specifically prohibited by law:

(1) Any records of the court which are pertinent to the case;

(2) Any records of the department pertaining to the child, the child's parents, or legal custodian; and

(3) Any records in the possession of an agency or other entity pertaining to the child, the child's parents, or legal custodian if such records are relevant to review of the case. [1989 1st ex.s. c 17 § 9.]

13.70.080 Review of case—Employee duties.

The department and any other agency directly responsible for the care and placement of the child in substitute care shall require the employee who has primary case-planning responsibility for the case to attend the review. If the employee is unable to attend the review, an employee with knowledge of the case plan shall attend the review. [1989 1st ex.s. c 17 § 10.]

13.70.090 Board—Powers and duties—Immunity.

(1) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The declaration of the member shall be recorded in the official records of the board and disclosed to all parties participating in the review. If, in the judgment of the majority of the local board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(2) The board shall keep accurate records, including a verbatim record of board reviews, and retain these records.

(3) The board may hold joint or separate reviews for groups of siblings.

(4) The board may disclose information to participants in the board review of a case. Before participating in a board review, each participant shall swear or affirm to the board that the participant shall keep confidential the information disclosed by the board in the case review and to disclose it only as authorized by law.

(5) Members of the board shall be held immune from suit and not be held liable in any civil action for recommendations made or activities performed under this chapter. [1989 1st ex.s. c 17 § 11.]

13.70.100 Child in substitute care—No dependency petition—Procedures—Review.

(1) This section shall apply to cases where a child has been placed in substitute care pursuant to written parental consent and a dependency petition has not been filed under chapter 13.34 RCW. If a dependency petition is subsequently filed and the child's placement in substitute care continues pursuant to a court order entered in a proceeding under chapter 13.34 RCW, the provisions set forth in RCW 13.70.110 shall apply.

(2) Within thirty days following commencement of the placement episode, the department shall send a copy of the written parental consent to the juvenile court with jurisdiction over the geographical area in which the child resides.

(3) Within forty-five days following commencement of the placement episode, the court shall assign the child's case to a board and forward to the board a copy of the written parental consent to placement.

(4) The board shall review the case plan for each child in substitute care whose case is assigned to the board by the court. The review shall take place at times set by the board. The first review shall occur within ninety days following commencement of the placement episode. The second review shall occur within six months following commencement of the placement episode. The final board review shall occur no later than six months following the second review

unless the child is no longer in substitute care or unless a guardianship order or adoption decree is entered.

(5) The board shall prepare written findings and recommendations with respect to:

(a) Whether reasonable efforts were made before the placement to prevent or eliminate the need for removal of the child from the home;

(b) Whether reasonable efforts have been made subsequent to the placement to make it possible for the child to be returned home;

(c) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration has been given to placement with the child's relatives;

(d) Whether there is a continuing need for and whether the placement is appropriate;

(e) Whether there has been compliance with the case plan;

(f) Whether progress has been made toward alleviating the need for placement;

(g) A likely date by which the child may be returned home or other permanent plan of care may be implemented; and

(h) Other problems, solutions, or alternatives the board determines should be explored.

(6) Within ten working days following the review, the board shall send a copy of its findings and recommendations to the child's parents and their attorneys, the child's custodians and their attorneys, mature children and their attorneys, and the department and other child placement agencies directly responsible for supervising the child's placement. If the child is an Indian as defined in the Indian child welfare act, 25 U.S.C. 1901 et seq., a copy of the board's findings and recommendations shall also be sent to the child's Indian tribe.

(7) If the department is unable or unwilling to implement the board recommendations, the department shall submit to the board, within ten working days after receipt of the findings and recommendations, an implementation report setting forth the reasons why the department is unable or unwilling to implement the board's recommendations. The report will also set forth the case plan which the department intends to implement.

(8) The court shall not review the findings and recommendations of the board in cases where the child has been placed in substitute care with signed parental consent unless a dependency petition has been filed and the child has been taken into custody under RCW 13.34.050. [1993 c 505 § 2; 1989 1st ex.s. c 17 § 12.]

13.70.110 Child in substitute care under dependency proceeding—Procedures—Review. (1) This section shall apply to cases where a child has been placed in substitute care pursuant to a proceeding under chapter 13.34 RCW.

(2) Within forty-five days following commencement of the placement episode, the court shall assign the child's case to a board and forward to the board a copy of the dependency petition and any shelter care or dependency disposition orders which have been entered in the case by the court.

(3) The board shall review the case plan for each child whose case is assigned to the board by the court. The review shall take place at times set by the board. The first review shall occur within ninety days following commencement of the placement episode. The second review shall occur within six months following commencement of the placement episode. The next review shall occur within one year after commencement of the placement episode. Within eighteen months following commencement of the placement episode, a permanency planning hearing shall be held before the court in accordance with RCW 13.34.145. Thereafter, the court shall assign the child's case for a board review or a court review hearing pursuant to *RCW 13.34.130(5). A board review or a court review hearing shall take place at least once every six months until the child is no longer within the jurisdiction of the court or no longer in substitute care or until a guardianship order or adoption decree is entered. After the permanency planning hearing, a court review hearing must occur at least once a year as provided in RCW 13.34.130. The board shall review any case where a petition to terminate parental rights has been denied, and such review shall occur as soon as practical but no later than forty-five days after the denial.

(4) The board shall prepare written findings and recommendations with respect to:

(a) Whether reasonable efforts were made before the placement to prevent or eliminate the need for removal of the child from the home, including whether consideration was given to removing the alleged offender, rather than the child, from the home;

(b) Whether reasonable efforts have been made subsequent to the placement to make it possible for the child to be returned home;

(c) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration has been given to placement with the child's relatives;

(d) Whether there is a continuing need for placement and whether the placement is appropriate;

(e) Whether there has been compliance with the case plan;

(f) Whether progress has been made toward alleviating the need for placement;

(g) A likely date by which the child may be returned home or other permanent plan of care may be implemented; and

(h) Other problems, solutions, or alternatives the board determines should be explored.

(5) Within ten working days following the review, the board shall send a copy of its findings and recommendations to the parents and their attorneys, the child's custodians and their attorneys, mature children and their attorneys, other attorneys or guardians ad litem appointed by the court to represent children, the department and other child placement agencies directly responsible for supervising the child's placement, and any prosecuting attorney or attorney general actively involved in the case. If the child is an Indian as defined in the Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., a copy of the board's findings and recommendations shall also be sent to the child's Indian tribe.

(6) If the department is unable or unwilling to implement the board recommendations, the department shall

submit to the board, within ten working days after receipt of the findings and recommendations, an implementation report setting forth the reasons why the department is unable or unwilling to implement the board's recommendations. The report will also set forth the case plan which the department intends to implement.

(7) Within forty-five days following the review, the board shall either:

(a) Schedule the case for further review by the board; or

(b) Submit to the court the board's findings and recommendations and the department's implementation reports, if any. If the board's recommendations are different from the existing court-ordered case plan, the board shall also file with the court a motion for a review hearing.

(8) Within ten days of receipt of the board's written findings and recommendations and the department's implementation report, if any, the court shall review the findings and recommendations and implementation reports, if any. The court may on its own motion schedule a review hearing.

(9) Unless modified by subsequent court order, the court-ordered case plan and court orders that are in effect at the time that a board reviews a case shall remain in full force and effect. Board findings and recommendations are advisory only and do not in any way modify existing court orders or court-ordered case plans.

(10) The findings and recommendations of the board and the department's implementation report, if any, shall become part of the department's case file and the court social file pertaining to the child.

(11) Nothing in this section shall limit or otherwise modify the rights of any party to a dependency proceeding to request and receive a court review hearing pursuant to the provisions of chapter 13.34 RCW or applicable court rules. [1991 c 127 § 5; 1989 1st ex.s. c 17 § 13.]

***Reviser's note:** RCW 13.34.130 was amended by 1998 c 314 § 2, changing subsection (5) to subsection (7).

13.70.120 Board recommendations. In addition to reviewing individual cases of children in substitute care, boards may make recommendations to the court and the department concerning substitute care services, policies, procedures, and laws. [1989 1st ex.s. c 17 § 14.]

13.70.130 Funds from public and private sources. The administrator for the courts may apply for and receive funds from federal, local, and private sources for carrying out the purposes of this chapter. [1989 1st ex.s. c 17 § 15.]

13.70.140 Review by court. A permanency planning hearing shall be held before the court in accordance with RCW 13.34.145. Thereafter, court review hearings shall occur at least once every six months, under *RCW 13.34.130(5), until the child is no longer within the jurisdiction of the court or the child returns home or a guardianship order or adoption decree is entered. The court may review the case more frequently upon the court's own motion or upon the request of any party to the proceeding. [1993 c 505 § 4; 1989 1st ex.s. c 17 § 16.]

***Reviser's note:** RCW 13.34.130 was amended by 1998 c 314 § 2, changing subsection (5) to subsection (7).

13.70.150 Indian children—Local Indian child welfare advisory committee may serve as citizen review board. (1) If a case involves an Indian child, as defined by 25 U.S.C. Sec. 1903 or by department rule or policy, the court may appoint the local Indian child welfare advisory committee to serve as the citizen review board for the case unless otherwise requested by the child's tribe or by the local Indian child welfare advisory committee.

(2) The provisions of RCW 13.70.030, 13.70.040, 13.70.050, and 13.70.090(1) shall not apply to cases in which the court has appointed a committee to serve as a citizen review board. All other provisions of this chapter shall apply to such cases.

(3) Within ten days following court appointment of a committee to serve as a citizen review board for a particular case, the committee shall notify the court whether the committee will accept the case for review. If the committee accepts a case for review, the committee shall conduct the review in accordance with the requirements of this chapter except as otherwise provided in this section. If the committee does not accept a case for review, the court shall immediately reassign the case to an available board.

(4) The requirements of this chapter do not affect tribal sovereignty and shall not apply to cases involving Indian children who are under tribal court jurisdiction or wardship. [1991 c 127 § 1.]

Chapter 13.80

LEARNING AND LIFE SKILLS GRANT PROGRAM

Sections

13.80.010	Purpose.
13.80.020	Definitions.
13.80.030	Program grants.
13.80.040	Rules.
13.80.050	Evaluation.

13.80.010 Purpose. The learning and life skills grant program is created. The purpose of the program is to provide services, to the extent funds are appropriated, for court-involved youth under the age of twenty-one to help the youth attain the necessary life skills and educational skills to obtain a certificate of educational competency, obtain employment, return to a school program, or enter a postsecondary education or job-training program. [1994 c 152 § 1.]

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

(1) "Court-involved youth" means those youth under the age of twenty-one who, within the past twenty-four months:

(a) Have served a court-imposed sentence;

(b) Are or have been on probation or parole; or

(c) Are involved in a legal proceeding in which the youth may be found to have committed a criminal or juvenile offense and are not participating in a diversion agreement under RCW 13.40.080.

(2) "Department" means the department of social and health services. [1994 c 152 § 2.]

13.80.030 Program grants. (1) The learning and life skills program grants shall be administered by the department.

(2) The department shall select individual school districts or groups of school districts through an educational service district that agree to establish a program for court-involved youth. To be eligible for grants, the district shall agree to expend for the program no less than the amount of state funds received on a full-time equivalent student basis for the number of full-time equivalent students participating in the program. The school district shall also transmit to the program any federal funds received for students participating in the program. During the 1994-95 school year, only school districts or educational service districts operating a program for court-involved youth on or before June 1, 1993, are eligible for grants.

(3) The department shall grant funds, to the extent funds are appropriated, to selected districts for the district to provide or contract for the provision of facilities and case management and counseling services for students in the program.

(4) In selecting districts, the department shall require districts to enter into agreements. Districts participating in the program shall agree to the following: To serve only court-involved youth in the program and give priority to those students who have few other educational options; to design a program to meet the specific needs of court-involved youth generally and the specific needs of individual students; to collaborate with the county courts and local community organizations; and to define program goals clearly.

(5) The department has the authority to withhold grant funds if the terms of the agreement are not met.

(6) Selected districts shall establish procedures to keep daily attendance records for students participating in the program.

(7) Selected districts shall agree to participate fully in an evaluation of the program by the department. [1994 c 152 § 3.]

13.80.040 Rules. The department may adopt rules, as necessary, to carry out its duties under this program. [1994 c 152 § 4.]

13.80.050 Evaluation. The department shall periodically evaluate the program including but not limited to providing data on the youth served, the type and extent of court involvement, the type of services provided, the length of stay of each student in the program, the academic progress of the youth, the recidivism rate, and rates of employment and enrollment in postsecondary education. [1994 c 152 § 5.]

Title 14

AERONAUTICS

Chapters

- 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.

Aeronautics, department of transportation, division of: Chapter 47.68 RCW.

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.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Recycling: RCW 70.93.095.

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 property for airport purposes

county property: RCW 36.34.180.

port district property: 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

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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	Definition—"Municipality."
14.08.015	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.
14.08.122	Adoption of regulations by airport operator for airport rental and use and collection of charges.
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.
14.08.300	Governing body of district.
14.08.302	Board of airport district commissioners—Petition—Order establishing.
14.08.304	Board of airport district commissioners—Members—Election—Terms—Expenses.
14.08.310	Assistance to other municipalities.
14.08.330	Jurisdiction of municipality over airport and facilities exclusive—Concurrent jurisdiction over adjacent territory—Fire code enforcement by agreement.
14.08.340	Interpretation and construction.
14.08.350	Severability—1945 c 182.
14.08.360	Short title.
14.08.370	Repeal.

Lease of property for airport purposes

county property: RCW 36.34.180.

port district property: RCW 53.08.080.

Municipal airports—1941 act: Chapter 14.07 RCW.

14.08.010 Definition—"Municipality." (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, airport district, or port district of this state; "airport purposes" means and includes airport, restricted landing area and other air navigation facility purposes. [1987 c 254 § 3; 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 47.68 RCW.

14.08.015 Definitions. (1) "Airport charges" means charges of an airport operator for tie-downs, landing fees, the occupation of a hangar by an aircraft, and all other charges owing or to become owing under a contract between an aircraft owner and an airport operator or under an officially adopted regulation and/or tariff including, but not limited to, the cost of sale and related expenses.

(2) "Aircraft" means every species of aircraft or other mechanical device capable of being used for the purpose of aerial flight.

(3) "Airport operator" means any municipality as defined in RCW 14.08.010(2) or state agency which owns and/or operates an airport.

(4) "Owner" means (a) every natural person, firm, partnership, corporation, association, trust, estate, or organization, or agent thereof with actual or apparent authority, who expressly or impliedly contracts for use of airport property for landing, parking, or hangaring aircraft, and (b) includes the registered owner or owners and lienholders of record with the federal aviation administration. [1987 c 254 § 1.]

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, if the plan and system resolution are approved by the secretary of transportation or the state auditor. [1995 c 301 § 32; 1984 c 7 § 4; 1945 c 182 § 6; Rem. Supp. 1945 § 2722-35.]

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

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. (1) 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 owner 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 any 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 any 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 as provided in RCW 39.46.030; 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 county legislative authority, 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; any 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 bond owners 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 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 owner 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.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 16; 1970 ex.s. c 56 § 3; 1969 ex.s. c 232 § 2; 1957 c 53 § 1.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

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 owner 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. [1983 c 167 § 17; 1970 ex.s. c 56 § 4; 1969 ex.s. c 232 § 3; 1957 c 53 § 2.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

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 conferred in this chapter, and without limitation thereof, a municipality that has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or

that has acquired or set apart or may hereafter acquire or set apart real property for that purpose or purposes is authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality by ordinance or resolution that prescribes the powers and duties of the officer, board, or body; and the 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 the municipality by an ordinance or resolution that includes (a) the terms of office, which may not exceed six years and which 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 the construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation, and regulation are the responsibility of the municipality.

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or outside 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 the rules, regulations, and ordinances, and enforce those 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, that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter is 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 the 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 shall conform to and be consistent with the laws of this state and the rules of the state department of transportation 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) To create a special airport fund, and provide that all receipts from the operation of the airport be deposited in the 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 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 thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to authorize its lessees to construct, alter, repair, or improve the leased premises at the cost of the lessee and to reimburse its lessees for such cost, provided the cost is paid solely out of funds fully collected from the airport's tenants; 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) Acting through its governing body, to 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 takeoffs 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 subsection (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs, or related aeronautic purposes. 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 that seem just and proper to the municipal airport commission. 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, but 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 readjustment is given by either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested. If the parties cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period

adjusted by arbitration. The lessee shall pick one arbitrator, and the governing body of the municipality shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. If all the proceeds of the 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 the 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 granted in this section. [1990 c 215 § 1; 1984 c 7 § 5; 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.]

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

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.]

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.

14.08.122 Adoption of regulations by airport operator for airport rental and use and collection of charges. An airport operator may adopt all regulations necessary for rental and use of airport facilities and for the expeditious collection of airport charges. The regulations may also establish procedures for the enforcement of these regulations by the airport operator. The regulations shall include the following:

(1) Procedures authorizing airport personnel to take reasonable measures including, but not limited to, the use of chains, ropes, and locks to secure aircraft within the airport facility so that the aircraft are in the possession and control of the airport operator and cannot be removed from the airport. These procedures may be used if an owner hangaring or parking an aircraft at the airport fails to pay the airport charges owed and the account is at least sixty days delinquent. At the time of securing the aircraft, an autho-

ized airport employee shall attach to the aircraft a readily visible notice and shall send a copy of the notice to the owner at his or her last known address by registered mail, return receipt requested, and a copy of the notice by first class mail. The notice shall be of a reasonable size and shall contain the following information:

- (a) The date and time the notice was attached;
- (b) A reasonable description of the aircraft;
- (c) The identity of the authorized employee;
- (d) The amount of airport charges owing;

(e) A statement that if the account is not paid in full within one hundred eighty days from the time the notice was attached the aircraft may be sold at public auction to satisfy the airport charges;

- (f) The time and place of sale;

(g) A statement of the owner's right to commence legal proceedings to contest the charges owing and to have the aircraft released upon posting of an adequate cash bond or other security; and

(h) The address and telephone number where additional information may be obtained concerning the release of the aircraft.

(2) Procedures authorizing airport personnel at their discretion to place aircraft in an area within the airport operator's control for storage with private persons under the airport operator's control as bailees of the airport facility. Reasonable cost of any such procedure shall be paid by the aircraft's owner.

(3) If an aircraft is moved under conditions authorized under this section the owner who is obligated for hangaring or parking or other airport charges may regain possession of the aircraft by:

(a) Making arrangements satisfactory with the airport operator for the immediate removal of the aircraft from the airport's hangar, or making arrangements for authorized parking; and

(b) By making payment to the operator of all airport charges or by posting with the operator a sufficient cash bond or other security acceptable to such operator, to be held in trust by the operator pending written agreement of the parties with respect to payment by the aircraft owner of the amount owing, or pending resolution of charges in a civil action in a court of competent jurisdiction, the trust shall terminate and the airport operator shall receive so much of the bond or other security as is necessary to satisfy any judgment, costs, and interest as may be awarded to the airport operator. The balance shall be refunded immediately to the owner at the owner's last known address by registered mail, return receipt requested. The airport operator shall send to the owner by first class mail a notice that the balance of funds was forwarded to him or her by registered mail, return receipt requested.

(4) If an aircraft parked or hangared at an airport is abandoned, the airport operator may authorize the public sale of the aircraft by authorized personnel to the highest and best bidder for cash as follows:

(a) If an aircraft has been secured by the airport operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within one hundred eighty days after notifying the owner under subsection (1) of this section, or in all other cases, for one hundred eighty days after the operator secures

the aircraft, the aircraft shall be conclusively presumed to have been abandoned by the owner;

(b) Before the aircraft is sold, the owner of the aircraft shall be given at least twenty days' notice of sale by registered mail, return receipt requested and the notice of sale shall be published at least once, more than ten but less than twenty days before the sale, in a newspaper of general circulation in the county in which the airport is located. The notice shall include the name of the aircraft, if any, its aircraft identification number, the last known owner and address, the time and place of sale, the amount of airport charges that will be owing at the time of sale, a reasonable description of the aircraft to be sold and that the airport operator may bid all or part of its airport charges at the sale and may become a purchaser at the sale;

(c) The proceeds of a sale under this section shall first be applied to payment of airport charges owed. The balance, if any, shall be deposited with the department of revenue to be held in trust for the owner or owners and lienholders for a period of one year. If more than one owner appears on the aircraft title, and/or if any liens appear on the title, the department must, if a claim is made, interplead the balance into a court of competent jurisdiction for distribution. The department may release the balance to the legal owner provided that the claim is made within one year of sale and only one legal owner and no lienholders appear on the title. If no valid claim is made within one year of the date of sale, the excess funds from the sale shall be deposited in the aircraft search and rescue, safety, and education account created in RCW 47.68.236. If the sale is for a sum less than the applicable airport charges, the airport operator is entitled to assert a claim against the aircraft owner or owners for the deficiency.

(5) The regulations authorized under this section shall be enforceable only if:

(a) The airport operator has had its tariff and/or regulations, including any and all regulations authorizing the impoundment of an aircraft that is the subject of delinquent airport charges, conspicuously posted at the airport manager's office.

(b) All impounding remedies available to the airport operator are included in any written contract for airport charges between an airport operator and an aircraft owner; and

(6) All rules and regulations authorized under this section are adopted either pursuant to chapter 34.05 RCW, or by resolution of the appropriate legislative authority, as applicable. [1987 c 254 § 2.]

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 airports and other air navigation facilities.

(2) The governing body of any municipality is authorized to designate the state secretary of transportation as its agent to accept, receive, and receipt for federal moneys on

its behalf for airport purposes and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, and may enter into an agreement with the secretary of transportation 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 the municipality under such terms and conditions as may be imposed by the United States government in making the 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 state secretary of transportation, shall be made pursuant to the laws of this state governing the making of like contracts, except that where the acquisition, construction, improvement, enlargement, maintenance, equipment, or operation is financed wholly or partly with federal moneys, the municipality or the secretary of transportation, 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. [1984 c 7 § 6; 1945 c 182 § 9; Rem. Supp. 1945 § 2722-38. Formerly RCW 14.08.160, 14.08.170, and 14.08.180.]

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

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 outside the territorial limits of either or any of the municipalities and within or outside this state, or by this state or any municipality therein acting jointly with any other state or municipality therein, either within or outside this state if the laws of the other state permit such joint action.

(2) For the purposes of this section only, unless another intention clearly appears or the context requires otherwise, this state is included in the term "municipality," and all the powers conferred upon municipalities in this chapter, if not otherwise conferred by law, are 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 means, as to the state, its secretary of transportation.

(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 under this section. Concurrent action by the governing bodies of the municipalities involved constitutes 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 the property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this section or if the agreement is 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 authorized in this section shall create a board from the inhabitants of the 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. The 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 the municipalities granted by this chapter, except as provided in this section. 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 is necessary then upon the board's own determination, such property may be acquired by private negotiation under such terms and condi-

tions as seem just and proper to the board. 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) 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, may 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 seem just and proper to the board, subject to the provisions of RCW 14.08.120(4). Subject to the provisions of the agreement for the joint venture, and when it appears 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 seem just and proper to the board.

(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. When so adopted, the ordinances have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or outside the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of the municipalities in the same manner as are its individual ordinances. The consent of the state secretary of transportation to any such ordinance, where the state is a party to the joint venture, is equivalent to the enactment of the ordinance by a municipality. The publication provided for in RCW 14.08.120(2) 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) 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 shall 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. The revenues obtained from the ownership, control, and operation of the airports and other air navigation facilities jointly controlled shall be paid into the fund, to be expended as provided in this chapter. Revenues in excess of cost of maintenance and operating expenses of the joint

properties shall 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) The governing body may by joint directive designate some person having experience in financial or fiscal matters as treasurer of the joint operating agency. Such a treasurer shall possess all the powers, responsibilities, and duties that the county treasurer and auditor possess for a joint operating agency related to creating and maintaining funds, issuing warrants, and investing surplus funds. The governing body may, and if the treasurer is not the county treasurer it shall, require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the governing body finds will protect the joint operating agency. The premium on such bond shall be paid by the joint operating agency. All disbursements from the joint 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. If no such joint directive is made by the governing appointing bodies to designate a treasurer, then the provisions of RCW 43.09.285 apply to such joint fund.

(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. [1987 c 254 § 4; 1984 c 7 § 7; 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.]

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

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. The first commissioners shall be appointed by the county legislative authority. At the next general district election, held as provided in RCW 29.13.020, three airport district commissioners shall be elected. The terms of office of airport district commissioners shall be two years, or until their successors are elected and qualified and have assumed office in accordance with RCW 29.04.170. Members of the board of airport district commissioners shall be elected at each regular district general election on a nonpartisan basis in accordance with the general election law. Vacancies on the board of airport district commissioners shall occur and shall be filled as provided in chapter 42.12 RCW. 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. [1994 c 223 § 4; 1979 ex.s. c 126 § 3; 1951 c 114 § 3.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

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 of municipality over airport and facilities exclusive—Concurrent jurisdiction over adjacent territory—Fire code enforcement by agreement. 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. The municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in RCW 14.08.120(2). No other municipality in which the airport or air navigation facility is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations. However, by agreement with the municipality operating and controlling the airport or air navigation facility, a municipality in which an airport or air navigation facility is located may be responsible for the administration and enforcement of the uniform fire code, as adopted by that municipality under RCW 19.27.040, on that portion of any airport or air navigation facility located within its jurisdictional boundaries. [1985 c 246 § 1; 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

14.12.010	Definitions.
14.12.020	Airport hazards contrary to public interest.
14.12.030	Power to adopt airport zoning regulations.
14.12.050	Relation to comprehensive zoning regulations.
14.12.070	Procedure for adoption of zoning regulations.
14.12.090	Airport zoning requirements.
14.12.110	Permits and variances.
14.12.140	Board of adjustment.
14.12.180	Administration of airport zoning regulations.
14.12.190	Appeals.
14.12.200	Judicial review.
14.12.210	Enforcement and remedies.
14.12.220	Acquisition of air rights.
14.12.900	Severability—1945 c 174.
14.12.910	Short title.

Municipal airports, subject to county's comprehensive plan and zoning ordinances: RCW 35.22.415.

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 admin-

istrative 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

- 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—Exceptions.
- 14.16.090 Certain aircraft to carry survival kit—Contents—Misdemeanor to operate without—Exceptions.
- 14.16.900 Severability—1929 c 157.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

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 state department of transportation or the federal aviation administration 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 so that it will be effective to assist in the location of the downed aircraft. "Air school" means air school as defined in RCW 47.68.020(11). [1984 c 7 § 8; 1969 ex.s. c 205 § 1; 1929 c 157 § 1; RRS § 2722-1.]

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

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 47.68.230.

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 and airwoman certificates required: RCW 47.68.230.
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, or any aircraft that is rented or leased without a pilot, shall be equipped with a fully functional 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) instructional flights by an air school, with the exception of solo flights by students; (2) aircraft owned by and used exclusively in the service of the United States government; (3) aircraft registered under the laws of a foreign country; (4) 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 (5) 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. [1987 c 273 § 1; 1969 ex.s. c 205 § 2.]

14.16.090 Certain aircraft to carry survival kit—Contents—Misdemeanor to operate without—Exceptions.

(1) Any aircraft used to carry persons or property for compensation, or any aircraft that is rented or leased without a pilot shall be equipped with a survival kit consisting of those items prescribed by the department of transportation, which shall include, at least the following: (a) A tube tent or similar sheltering device; (b) a horn, whistle, or similar audible device capable of emitting a signal one-quarter of a mile; (c) a mirror; (d) matches; (e) a candle and/or another fire-starting device; and (f) survival instruction.

(2) It shall be unlawful for any person to operate such aircraft without such a survival kit: PROVIDED, HOWEVER, That nothing in this section shall apply to: (a) Instructional flights by an air school, with the exception of solo flights by students; (b) aircraft owned by and exclusively in the service of the United States government; (c) aircraft registered under the laws of a foreign country; (d) 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 (e) 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. [1987 c 273 § 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

14.20.010	Definitions.
14.20.020	Aircraft dealer licensure—Penalty.
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—Grounds.
14.20.100	Appeal from secretary's order.

Aircraft excise tax: Chapter 82.48 RCW.

14.20.010 Definitions. When used in this chapter and RCW 47.68.250 and 82.48.100:

(I) "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 or who offers for sale two or more aircraft within a calendar year;

(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) "Secretary" means the secretary of the state department of transportation. [1993 c 208 § 1; 1984 c 7 § 9; 1955 c 150 § 1.]

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

14.20.020 Aircraft dealer licensure—Penalty. (1) It is unlawful for a person to act as an aircraft dealer without a currently valid aircraft dealer's license issued under this chapter. A person acting as an aircraft dealer without a currently issued aircraft dealer's license is guilty of a misdemeanor and shall be punished by either a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or both. A person convicted on a second or subsequent conviction within a five-year period is guilty of a gross misdemeanor and shall be punished by either a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both. In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence that may be imposed under this section, the court in its discretion may prohibit the violator from acting as an aircraft dealer within the state for such a 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 contempt of court.

(2) Any person applying for an aircraft dealer's license shall do so at the office of the secretary on a form provided for that purpose by the secretary. [1993 c 208 § 2; 1984 c 7 § 10; 1983 c 135 § 1; 1955 c 150 § 2.]

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

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 secretary 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. [1984 c 7 § 11; 1955 c 150 § 3.]

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

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 the aircraft in lieu of a registration certificate or fee and in lieu of payment of excise tax. The secretary 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 provided in RCW 14.20.050. Nothing contained in this section, however, may be construed to prevent transferability among dealer aircraft of any aircraft dealer's certificate, and the certificate need be displayed on dealer aircraft only while in actual use or flight. Every aircraft dealer's certificate issued expires on December 31st, and may be renewed upon renewal of an aircraft dealer's license. [1984 c 7 § 12; 1955 c 150 § 4.]

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

14.20.050 License and certificate fees. The fee for original aircraft dealer's license for each calendar year or fraction thereof is seventy-five dollars, which includes one aircraft dealer's certificate and which must be renewed annually for a fee of seventy-five dollars. Additional aircraft dealer certificates may be obtained for ten dollars each per year. If any dealer fails or neglects to apply for renewal of his license prior to February 1st in each year, his license shall be declared canceled by the secretary, in which case any such dealer desiring a license shall reapply and pay a fee of seventy-five dollars. [1998 c 187 § 1; 1984 c 7 § 13; 1955 c 150 § 5.]

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

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 paid to the secretary. The fee for any calendar year may be paid on and after the first day of December of the preceding year. The secretary shall give appropriate receipts therefor. The fees collected under this chapter shall be credited to the aeronautics account of the transportation fund. The secretary may prescribe requirements for the possession and exhibition of aircraft dealer's licenses and aircraft dealer's certificates. [1998 c 187 § 2; 1984 c 7 § 14; 1955 c 150 § 6.]

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

14.20.070 Surety bonds. Before issuing an aircraft dealer license, the secretary shall require the applicant to file with the secretary a surety bond in the amount of twenty-five thousand dollars running to the state, and executed by a surety company authorized to do business in the state. The 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 47.68.250, and 82.48.100. Any person who has 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 has a right of action against the aircraft dealer and the surety upon the bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall in no

event exceed the amount of the bond. [1984 c 7 § 15; 1983 c 135 § 2; 1983 c 3 § 17; 1955 c 150 § 7.]

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

Surety insurance: 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—Grounds. The secretary 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 the 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 an aircraft any document referred to in subsection (1) of this section 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 the 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 or RCW 47.68.250 and 82.48.100;

(7) Been adjudged guilty of a crime that directly relates to the business of an aircraft dealer and the time elapsed since the conviction is less than ten years, or had a judgment entered against the dealer within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purpose of this section, the term "adjudged guilty" means, in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the imposition of the sentence is deferred or the penalty is suspended. [1984 c 7 § 16; 1983 c 135 § 3; 1983 c 3 § 18; 1955 c 150 § 9.]

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

14.20.100 Appeal from secretary's order. If the secretary issues 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 has thirty days from the date of the secretary's order to appeal therefrom to the superior court of Thurston county, which he may do by filing a notice of the appeal with the clerk of the superior

court and at the same time filing a copy of the notice with the secretary. [1984 c 7 § 17; 1955 c 150 § 10.]

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

Chapter 14.30

WESTERN REGIONAL SHORT HAUL AIR TRANSPORTATION COMPACT

(See chapter 81.96 RCW)

Title 15

AGRICULTURE AND MARKETING

Chapters

- | | |
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Inspection and licensing.</p> <p>15.14 Planting stock.</p> <p>15.15 Certified seed potatoes.</p> <p>15.17 Standards of grades and packs.</p> <p>15.19 Ginseng.</p> <p>15.21 Washington fresh fruit sales limitation act.</p> <p>15.24 Apple advertising commission.</p> <p>15.26 Tree fruit research act.</p> <p>15.28 Soft tree fruits.</p> <p>15.30 Controlled atmosphere storage of fruits and
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mortgages: Article 62A.9 RCW.</i></p> <p><i>Dealers in hay or straw, certified vehicle weights required: RCW 20.01.125.</i></p> <p><i>Department of agriculture: Chapters 43.17, 43.23 RCW.
Eggs and egg products: Chapter 69.25 RCW.
Farm labor contractors: Chapter 19.30 RCW.
Farm vehicles, gross weight fees: RCW 46.16.090.
Food, drug, and cosmetic act: Chapter 69.04 RCW.
Food and beverages, worker's permits: Chapter 69.06 RCW.
Food lockers: Chapter 19.32 RCW.
Fraud in measurement of agricultural products: RCW 9.45.122 through 9.45.126.</i></p> <p>Grain
<i>elevators, warehouses, etc.: Title 22 RCW.
warehouse insurance: Chapter 22.09 RCW.</i></p> <p><i>Grain and other commodities, standard grades: Chapter 22.09 RCW.
Grain and terminal warehouses, commodity inspection: Chapter 22.09 RCW.</i></p> <p><i>Granges: Chapter 24.28 RCW.
Grazing ranges: RCW 79.01.244, 79.01.296, chapter 79.28 RCW.
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Hops, bale, tare: RCW 19.92.240.
Insect pests and plant diseases: Chapter 17.24 RCW.
Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 15.66.185.</i></p> <p><i>Liability of agricultural landowners for injuries to recreation users—
Limitation: RCW 4.24.210.</i></p> |
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Liens

agister and trainer: Chapter 60.56 RCW.
chattel, crop liens: Chapter 60.08 RCW.
crop: Chapter 60.11 RCW.
orchards and orchard lands: Chapter 60.16 RCW.
services of sires: Chapter 60.52 RCW.
warehouseman's: Article 62A.7 RCW.

Mosquito control: Chapter 70.22 RCW.

Motor vehicles

juvenile agricultural driving permits: RCW 46.20.070.
lamps on farm tractors, equipment, etc.: RCW 46.37.160.

New housing for farm workers to comply with state board of health regulations: RCW 70.54.110.

Nuisances, agricultural activities: RCW 7.48.300 through 7.48.310.

Orchards and orchard lands, liens: Chapter 60.16 RCW.

Pest control compact: Chapter 17.34 RCW.

Pesticide application: Chapter 17.21 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Services of sires, lien: Chapter 60.52 RCW.

Soil conservation: Chapter 89.08 RCW.

State international trade fairs: RCW 43.31.800 through 43.31.850.

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Vocational agriculture education—Service areas—Programs in local school districts: RCW 28A.300.090.

Washington clean air act: Chapter 70.94 RCW.

Weeds

destruction by cities: RCW 35.21.310.
generally: Title 17 RCW.

Weights and measures

generally: Chapters 19.92, 19.94 RCW.
standards, packages, boxes, etc.: Chapter 19.94 RCW.

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.]

15.04.090 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 created under RCW 15.76.115. [1998 c 345 § 1; 1961 c 11 § 15.04.090. Prior: 1953 c 119 § 1.]

Severability—1998 c 345: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 345 § 14.]

Effective date—Contingent effective date—1998 c 345: "(1) Sections 1 through 9, and *16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 3, 1998].

(2) Sections 10 through 12 of this act take effect July 1, 2001, if the repeal of RCW 67.16.100, 67.16.105, and 67.16.170 under section 9 of this act becomes effective." [1998 c 345 § 15.]

*Reviser's note: Section 16 of this act was vetoed by the governor.

Chapter 15.04**GENERAL PROVISIONS****Sections**

15.04.010	Definitions.
15.04.090	Lease of unnecessary lands to nonprofit groups—Funds.
15.04.110	Control of predatory birds.
15.04.120	Control of predatory birds—Expenditures and contracts.
15.04.150	Berry harvesting by youthful workers—Legislative finding.
15.04.160	Berry harvesting by youthful workers—Authorized—Restrictions.
15.04.200	Agricultural development or trade promotion and promotional hosting—Expenditures, approval by commodity commission—Exemption from housing requirements.
15.04.300	Guide to state and federal programs of assistance to farm families.
15.04.400	Findings—Department's duty to promote agriculture, protect public health and welfare.
15.04.402	Department to advance private sector, economic well-being of agricultural industry.
15.04.410	Declarations of "Washington state grown"—Restrictions—Violations unlawful—Application of consumer protection act.

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

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.]

15.04.150 Berry harvesting by youthful workers—Legislative finding. The legislature finds that the crops of berry growers in the state are imperiled by a recent change in the federal law relating to youthful agricultural workers. Since the berry harvest season is so short that few migrant agricultural workers find the trip to this state to pick berries worth the trouble, the long-established use of younger pickers must be permitted to the extent where such employment will not interfere with interstate commerce and the federal law. Further, the legislature finds that such employ-

ment is healthful, a good indoctrination for youth in the work ethic and the role of agriculture in society, and an opportunity youths welcome to earn extra spending money. [1975 1st ex.s. c 238 § 1.]

15.04.160 Berry harvesting by youthful workers—Authorized—Restrictions. (1) An employee engaged to pick berries in this state outside of school hours for the school district where such employee is living while so employed may be less than twelve years of age: PROVIDED, That (a) the employee is employed with the consent of his parent or person standing in the place of his parent, (b) the berries are for sale within the state only, and are not to be shipped out of the state in any form; (c) the secretary of agriculture or his designated representative has certified that there are not sufficient workers available in the immediate area to harvest the crop without such youthful employees, and (d) all employees of any employer engaging youthful employees are paid at the same rate for picking berries.

(2) Each basket, package, or other container containing berries or berry products picked by an employee under twelve years of age shall be distinctively marked so as to insure that the berries do not enter interstate commerce: PROVIDED HOWEVER, That nothing in RCW 15.04.150 and 15.04.160 shall apply to employers who are exempt from the federal fair labor standards act. [1975 1st ex.s. c 238 § 2.]

15.04.200 Agricultural development or trade promotion and promotional hosting—Expenditures, approval by commodity commission—Exemption from housing requirements. (1) Under the authority of Article VIII of the state Constitution as amended, agricultural commodity commission expenditures for agricultural development or trade promotion and promotional hosting by an agricultural commodities commission under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.88, and 16.67 RCW shall be pursuant to specific budget items as approved by the agricultural commodity commission at the annual public hearings on the agricultural commodity commission budget.

(2) Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents or commissioners. The rules shall identify officials and agents authorized to make expenditures and the objectives of the expenditures. Individual agricultural commodity commission commissioners shall make promotional hosting expenditures, or seek reimbursements for these expenditures, only in those instances where the expenditures have been approved by the agricultural commodity commission. All payments and reimbursements shall be identified and supported on vouchers.

(3) Agricultural commodity commissions shall be exempt from the requirements of RCW 43.01.090 and 43.19.500 and chapter 43.82 RCW. [1987 c 452 § 16; 1986 c 203 § 24; 1985 c 26 § 1.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Severability—1986 c 203: See note following RCW 15.17.245.

Effective date—Contingency—1985 c 26: "This act shall take effect January 1, 1986, if the proposed amendment to Article VIII, of the state Constitution authorizing agricultural commodity assessments for agricultural

development or trade promotion and promotional hosting to be deemed a public use for a public purpose is validly submitted to and is approved and ratified by the voters at a general election held in November 1985. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1985 c 26 § 2.] The proposed constitutional amendment was approved by the voters on November 5, 1985. See Article VIII, section 11 of the state Constitution.

15.04.300 Guide to state and federal programs of assistance to farm families. The department of agriculture is authorized to develop, in cooperation with Washington State University and other state agencies, an informational guide to programs offered by state and federal agencies which would be of assistance to farm families. The informational guide shall be made available to farmers and ranchers through county extension offices, farm organizations, and other appropriate means. [1987 c 393 § 26.]

15.04.400 Findings—Department's duty to promote agriculture, protect public health and welfare. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture, which is vital to the economic well-being of the state. The legislature finds that farmers and ranchers are responsible stewards of the land, but are increasingly subjected to complaints and unwarranted restrictions that encourage, and even force, the premature removal of lands from agricultural uses.

The legislature further finds that it is now in the overriding public interest that support for agriculture be clearly expressed and that adequate protection be given to agricultural lands, uses, activities, and operations.

The legislature further finds that the department of agriculture has a duty to promote and protect agriculture and its dependent rural community in Washington state however, the duty shall not be construed as to diminish the responsibility of the department to fully carry out its assigned regulatory responsibilities to protect the public health and welfare. [1994 c 46 § 9; 1991 c 280 § 1.]

Effective date—1994 c 46: See note following RCW 15.58.070.

15.04.402 Department to advance private sector, economic well-being of agricultural industry. The department shall seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber. Additionally, the department shall seek, consistent with its regulatory responsibilities, to maintain the economic well-being of the agricultural industry and its dependent rural community in Washington state. [1994 c 46 § 10; 1991 c 280 § 2.]

Effective date—1994 c 46: See note following RCW 15.58.070.

15.04.410 Declarations of "Washington state grown"—Restrictions—Violations unlawful—Application of consumer protection act. (1) Before being offered for retail sale in this state, any agricultural commodity, defined under RCW 15.66.010, that was grown or raised in this state may be advertised, labeled, described, sold, marked, or otherwise held out, with the words "Washington state grown," or other similar language indicating that the product is from Washington state grown or raised agricultural commodities.

(2) An agricultural commodity that was not grown or raised in this state and packages of that product shall not be advertised, labeled, described, sold, marked, or otherwise held out as "Washington state grown," or in any way as to imply that such product is a Washington state grown or raised agricultural commodity.

(3) It is unlawful for any person to violate this section.

(4) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. A violation of this section is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1995 c 97 § 1.]

Chapter 15.08

HORTICULTURAL PESTS AND DISEASES

Sections

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15.08.025	Disinfection of fruit trees—Procedures to be followed.
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15.08.250	Host-free districts—Director's duties.
15.08.260	Horticultural tax.
15.08.270	Basis for estimating the tax.

Pest control compact: Chapter 17.34 RCW.

15.08.010 Definitions. As used in this chapter:

(1) "Supervisor" means an assistant director known as the supervisor of plant industry.

(2) "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.

(3) "Nursery stock" includes, but is not limited to, any horticultural, floricultural, viticultural, and vegetable plant, for planting, propagation or ornamentation, growing or otherwise, including cut plant material.

(4) "Pests and diseases" means, but is not limited to, any living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertebrate animal, bacteria, fungus, other parasitic plant, weed, or reproductive part thereof, virus or any organism 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 or to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Nuisance" means any plant, produce or property found in any commercial area upon which is found any pest or disease that is or may be a source of infestation of other properties.

(6) "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.

(7) "Infect," and its derivatives "infected," "infecting," and "infection," means affected by or infested with pests or diseases as above defined.

(8) "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 effective pesticides. [1981 c 296 § 4; 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.]

Severability—1981 c 296: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 296 § 40.]

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 the official published recommendations of the Washington State University for the proper prevention, control and eradication of pests and diseases of fruit trees.

Whenever specific recommendations for disinfecting fruit trees are not set forth in the official published recommendations of the Washington State University, 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. [1981 c 296 § 5; 1965 c 27 § 2.]

Severability—1981 c 296: See note following RCW 15.08.010.

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.]

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 disinfest, 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 infested 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 infested. 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 may require the governing body of counties, cities, towns and irrigation and school districts or other political subdivisions of the state to disinfect or destroy all infected trees, shrubs, or other nursery stock growing upon public property within their respective jurisdictions, or the director may disinfect or destroy such infected trees, shrubs, or other nursery stock. [1981 c 296 § 6; 1961 c 11 § 15.08.230. Prior: 1915 c 166 § 19; RRS § 2857.]

Severability—1981 c 296: See note following RCW 15.08.010.

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

Sections

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15.09.900 Chapter cumulative.

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 appointed by the director. 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. [1988 c 254 § 7; 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 34.05 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 Failure to control horticultural pests and diseases—Remedies. (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. Any action that the board determines requires the destruction of infested plants, absent

the consent of the owner, shall be subject to the provisions of subsection (3) of this section.

(3) In the event the owner of land fails to control and prevent the spread of horticultural pests and diseases as required by RCW 15.09.060, and the county horticultural pest and disease board determines that actions it has taken to control and prevent the spread of such pests or diseases has not been effective or the county horticultural pest and disease board determines that no reasonable measures other than removal of the plants will control and prevent the spread of such pests or diseases, the county horticultural pest and disease board may petition the superior court of the county in which the property is situated for an order directing the owner to show cause why the plants should not be removed at the owner's expense and for an order authorizing removal of said infected plants. The petition shall state: (a) The legal description of the property on which the plants are located; (b) the name and place of residence, if known, of the owners of said property; (c) that the county horticultural pest and disease board has, through its officers or agents, inspected said property and that the plants thereon, or some of them, are infested with a horticultural pest or disease as defined by RCW 15.08.010; (d) the dates of all notices and orders delivered to the owners pursuant to this section; (e) that the owner has failed to control and prevent the spread of said horticultural pest or disease; and (f) that the county horticultural pest and disease board has determined that the measures taken by it have not controlled or prevented the spread of the pest or disease or that no reasonable measure can be taken that will control and prevent the spread of such pest or disease except removal of the plants. The petition shall request an order directing the owner to appear and show cause why the plants on said property shall not be removed at the expense of the owner, to be collected as provided in this chapter. The order to show cause shall direct the owner to appear on a date certain and show cause, if any, why the plants on the property described in the petition should not be removed at the owner's expense. The order to show cause and petition shall be served on the owner not less than five days before the hearing date specified in the order in the same manner as a summons and complaint. In the event the owner fails to appear or fails to show by competent evidence that the horticultural pest or disease has been controlled, then the court shall authorize the county horticultural pest and disease board to remove the plants at the owner's expense, to be collected as provided by this chapter. If the procedure provided herein is followed, no action for damages for removal of the plants shall lie against the county horticultural pest and disease board, its officers or agents, or the county in which it is situated. [1991 c 257 § 1; 1982 c 153 § 4; 1969 c 113 § 8.]

Severability—Effective date—1982 c 153: See notes following RCW 17.24.210.

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

Sections

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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).

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 the director's 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, and viticultural plant, for planting, propagation or ornamentation growing or otherwise. The term does not apply to cut plant material, except

cuttings, budsticks, scion wood, and similar plant parts used for propagative purposes, or to olericultural plants.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants 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.

(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 at any time prior to, during, or subsequent to harvest, or sale, by the director, and the issuance by the director of a written certificate stating the grades, classifications, and if such horticultural plants meet Washington requirements for freedom from infestation by plant pests and are in compliance with all other 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, 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.

(10) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(11) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or a form of certification document that accompanies the movement of inspected and certified plant material.

(12) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra for use in residential and commercial landscapes.

(13) "Collected horticultural plant" means a noncultivated native plant, collected in its native habitat and sold for horticultural purposes. For purposes of this chapter, such plants shall be regarded as collected horticultural plants for the first calendar year after collection. [1993 c 120 § 1; 1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

Severability—1982 c 182: See RCW 19.02.901

15.13.260 Enforcement—Rules and regulations—Scope. The director shall enforce the provisions of this chapter and 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 standards for such grades and/or classifications.

(2) The director may adopt rules for labeling or tagging and for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from infestation by plant pests.

(3) The director shall adopt rules establishing fees for inspection of horticultural plants and methods of collection thereof.

(4) The director may adopt rules prescribing minimum informational requirements for advertising for the sale of horticultural plants within the state.

(5) 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 34.05 RCW (administrative procedure act), concerning the adoption of rules and regulations. [1993 c 120 § 2; 1990 c 261 § 2; 1985 c 36 § 2; 1971 ex.s. c 33 § 2.]

15.13.265 Enforcement—Access to nursery dealer premises. The director may enter upon the premises of a nursery dealer at reasonable times for the purpose of carrying out the provisions of this chapter. If the director is denied access, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon such application issue the search warrant for the purposes requested. Denial of access to the director to perform inspections may subject a nursery dealer to revocation of the nursery license as provided in RCW 15.13.350. [1993 c 120 § 7.]

15.13.270 Licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations—Fee. The provisions of this chapter relating to licensing do not apply to: (1) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (2) any garden club, conservation district, 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; (3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales. The director may adopt rules establishing categories of sales and fees for the permit. The fees shall be deposited in the agricultural local fund.

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. [1993 c 120 § 3; 1990 c 261 § 3; 1985 c 36 § 3; 1983 1st ex.s. c 73 § 2; 1971 ex.s. c 33 § 3.]

15.13.280 Nursery dealer licenses—Farmers markets—Application—Fees—Expiration—Posting—Audit. (1) No person shall act as a nursery dealer without a license for each place of business where horticultural plants are sold except as provided in RCW 15.13.270. Any person applying for such a license shall apply through the master license system. The application shall be accompanied by a fee

established by the director by rule. The director shall establish by rule, in accordance with chapter 34.05 RCW, a schedule of fees for retail nursery dealer licenses and a schedule of fees for wholesale nursery dealer licenses which shall be based upon the amount of a person's retail or wholesale sales of horticultural plants and turf. The schedule for retail licenses shall include, but shall not be limited to, separate fees for at least the following two categories: (a) A fee for a person whose gross business sales of such materials do not exceed two thousand five hundred dollars; and (b) a fee for a person whose gross business sales of such materials exceed two thousand five hundred dollars.

(2) Except as provided in RCW 15.13.270, a person conducting both retail and wholesale sales of horticultural plants at a place of business shall secure for the place of business (a) a retail nursery dealer license if retail sales of the plants and turf exceed such wholesale sales, or (b) a wholesale nursery dealer license if wholesale sales of the plants and turf exceed such retail sales.

(3) For farmers markets that are registered as nonprofit associations with the office of the secretary of state and at which individual producers are selling directly to consumers as provided in RCW 36.71.090, the director may allow a farmers market, as an alternative to licensing of individual producers, to obtain one wholesale nursery dealer license, as provided in subsection (1) of this section, at the appropriate level to cover all producers at each site at which the market operates.

(4) The licensing fee that must accompany an application for a new license shall be based upon the estimated gross business sales of horticultural plants and turf for the ensuing licensing year. The fee for renewing a license shall be based upon the licensee's gross sales of such products during the preceding licensing year.

(5) The license shall expire on the master license expiration date unless it has been revoked or suspended prior to the expiration date by the director for cause. Each license shall be posted in a conspicuous place open to the public in the location for which it was issued.

(6) The department may audit licensees during normal business hours to determine that appropriate fees have been paid. [1993 c 120 § 4; 1987 c 35 § 1; 1985 c 36 § 4; 1983 1st ex.s. c 73 § 3; 1982 c 182 § 20; 1971 ex.s. c 33 § 4.]

Severability—1982 c 182: See RCW 19.02.901.

*Master license
expiration date:* RCW 19.02.090.
system

existing licenses or permits registered under, when: RCW 19.02.810.
generally: RCW 15.13.250(10).
to include additional licenses: RCW 19.02.110.

15.13.285 Nursery dealer licenses—Fee surcharge. The director may, with the advice of the advisory committee created under RCW 15.13.335, establish by rule a surcharge to be added to the fee established for a nursery dealer license under RCW 15.13.280. The surcharge applied to each license annually shall not exceed twenty percent times the amount of the license fee without the surcharge. Such a surcharge shall be paid at the same time that the licensing fee is paid. Revenue collected from the surcharge shall be deposited in the agricultural local fund under RCW 43.23.230 and shall be used solely to support research

projects which are of general benefit to the horticultural nursery industry and are recommended by the advisory committee created under RCW 15.13.335. [1992 c 23 § 1.]

Effective date—1992 c 23: "This act shall take effect on July 1, 1992." [1992 c 23 § 2.]

15.13.290 Nursery dealer licenses—Additional charge for late renewal. If any application for renewal of nursery dealer license is not filed prior to the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 21; 1971 ex.s. c 33 § 5.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

15.13.300 Nursery dealer licenses—Application—Contents. Application for a license shall be made through the master license system 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. [1982 c 182 § 22; 1971 ex.s. c 33 § 6.]

Severability—1982 c 182: See RCW 19.02.901.

Master license system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: Chapter 19.02 RCW.

15.13.310 Assessment on gross sale price of wholesale market value of fruit trees, ornamental trees, and rootstock—Method for determining—Due date—Gross sale period—Audit. (1) There is hereby levied an annual assessment on the gross sale price of the wholesale market value for all fruit trees, fruit tree related ornamental trees, and fruit tree rootstock produced in Washington, and 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. Fruit tree related ornamental tree nursery stock shall be limited to the genera, Chaenomeles, Cydonia, Crataegus, Malus, Prunus, Pyrus, and Sorbus. This annual assessment is based on the first sale price of such nursery stock except for rootstocks which are replanted and/or grafted or budded and planted for growing-on in the nursery. The director shall by rule subsequent to a hearing determine the rate of an assessment conforming 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 related ornamental trees, or fruit tree rootstock or of the shipper moving such fruit trees, fruit tree related ornamentals, 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 on the first day of July of each year.

(3) The gross sale period shall be from July 1 to June 30 of the previous license period.

(4) The department may audit the records of licensees during normal business hours to determine that the appropriate assessment has been paid. [1993 c 120 § 5; 1990 c 261 § 4; 1987 c 35 § 2; 1983 1st ex.s. c 73 § 4; 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 and fruit tree related ornamental tree certification and nursery improvement program.

(1) The committee shall consist of five fruit tree nursery dealers and the director or the director's designated appointee.

(2) The director shall appoint this committee from names submitted by the Washington state nursery and landscape association.

(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.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason the vacancy shall be filled by the director under the provisions of this section governing appointments. [1993 c 120 § 6; 1990 c 261 § 5; 1983 1st ex.s. c 73 § 5; 1971 ex.s. c 33 § 8.]

15.13.335 Advisory committee—Members—Terms. An advisory committee is hereby established to advise the director in the administration of this chapter.

(1) The committee shall consist of not less than four members, representing the interests of licensed nursery dealers and the nursery industry, appointed by the director in consultation with the following persons: The president of (a) the Washington state floricultural association, (b) the Washington state bulb association, and (c) the Washington state nursery and landscape association; and the director or the director's designated appointee.

(2) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successors have been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason, the vacancy shall be filled by the director under the provisions of this section governing appointments. [1990 c 261 § 6; 1983 1st ex.s. c 73 § 6.]

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, after determining 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 34.05 RCW concerning adjudicative proceedings, deny, suspend, or revoke any license issued or which may be issued under the provisions of this chapter. [1990 c 261 § 7; 1989 c 175 § 43; 1971 ex.s. c 33 § 11.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 nursery plant services inspector at such licensee's place of business or point of shipment during the shipping season. Subsequent to inspection the inspector shall issue to such licensee a certificate of inspection signed by the inspector covering any horticultural plants which the inspector finds not to be infected with plant pests and in compliance with the provisions of this chapter and rules adopted under this chapter. [1993 c 120 § 8; 1990 c 261 § 8; 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 the owner's 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 upon billing by the department. A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than

thirty days in arrears. In addition to any other penalties, the director may refuse to perform any inspection or certification service for any person in arrears unless the person makes payment in full prior to such inspection or certification service. [1990 c 261 § 9; 1971 ex.s. c 33 § 14.]

15.13.390 Unlawful selling, shipment, or transport of plants within state, when. It is unlawful for any person to sell, ship, or transport any horticultural plant in this state unless it meets standards established in rule for freedom from infestation by 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 under this chapter. [1993 c 120 § 9; 1971 ex.s. c 33 § 15.]

15.13.400 Unlawful shipment or delivery of plants into state, when—Certificate and inspection requirements. (1) It is 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 meets Washington requirements for freedom from infestation by plant pests and is in conformance with not less than the minimal requirements of this chapter or rules adopted under this chapter. 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 under this chapter, 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. [1993 c 120 § 10; 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.

(1) The department shall by rule establish marking or tagging requirements for the following plant types:

- (a) Fruit trees and ornamental trees and shrubs;
- (b) Perennial plants;
- (c) Flowering and nonflowering annuals and biennials;
- (d) Turf grasses;
- (e) Collected horticultural plants; and
- (f) Aquatic and semi-aquatic plants.

(2) When plants, other than floricultural products are on display for retail sale, each unit of sale shall be tagged as prescribed in rule.

(3) The director may, whenever the director 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. [1993 c 120 § 11; 1990 c 261 § 10; 1971 ex.s. c 33 § 17.]

15.13.420 Unlawful acts enumerated. It shall be unlawful for any person:

(1) To falsely represent that the person 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 or to sell, offer for sale, hold for sale, distribute, ship or deliver any horticultural plants not in conformity with standards established in rule concerning infestation by 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 alter an official certificate or other official inspection document for plant materials covered by this chapter or to represent a document as an official certificate when such is not the case;

(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. [1993 c 120 § 12; 1990 c 261 § 11; 1971 ex.s. c 33 § 18.]

15.13.425 False advertisements. 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 dissemination of any false advertisement, unless the person 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 dissemination of the false advertisement. [1993 c 120 § 13.]

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. A hold order may prescribe conditions under which plants must be held to prevent spread of the infestation or infection. Treatment or other corrective measures shall be the sole responsibility of the persons holding the plant material for sale. It shall be unlawful to sell, offer for sale, or move such plants until released in writing by the director. [1993 c 120 § 14; 1971 ex.s. c 33 § 19.]

15.13.440 Order of condemnation. 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, diseased, infested with harmful insects to the extent that treatment is not practical, damaged or frozen or abnormally potbound and shall order such horticultural plants to be destroyed or returned at shipper's option. [1993 c 120 § 15; 1990 c 261 § 12; 1971 ex.s. c 33 § 20.]

15.13.445 Hold order or condemnation—Hearing opportunity. Upon issuance of an order by the director under RCW 15.13.430 or 15.13.440, the seller or holder of the plant material is entitled to a hearing under chapter 34.05 RCW. [1993 c 120 § 16.]

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.]

15.13.455 Injunction to restrain operation as nursery dealer without valid license—Costs, attorneys' fees, and expenses. (1) The director is hereby authorized to apply to the superior court of Thurston county for a prompt

hearing on, and such court shall have jurisdiction upon, and for cause shown the court shall, without proof that an adequate remedy at law does not exist, grant, a temporary or permanent injunction restraining any person from operating as a nursery dealer without a valid license.

(2) An order restraining any person from operating as a nursery dealer without a valid license shall contain such provision for the payment of pertinent court costs and reasonable attorneys' fees and administrative expenses as is equitable and the court deems appropriate in the circumstances. [1983 1st ex.s. c 73 § 7.]

15.13.460 Prior rules adopted and continued. The repeal of RCW 15.13.010 through 15.13.210 and 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 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 34.05 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 34.05 RCW concerning the adoption of rules as enacted or hereafter amended. [1971 ex.s. c 33 § 24.]

15.13.470 Disposition of moneys collected under chapter—Expenditure. All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter and rules adopted under this chapter. No appropriation is required for the disbursement of moneys from the account by the director. Any residual balance of funds remaining in the nursery inspection fund on July 26, 1987, shall be transferred to that account within the agricultural local fund: PROVIDED, That all fees collected for fruit tree, fruit tree related ornamental tree, 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 and fruit tree related ornamental tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW. [1993 c 120 § 17; 1990 c 261 § 13; 1987 c 35 § 3; 1985 c 36 § 5; 1975 1st ex.s. c 257 § 1; 1971 ex.s. c 33 § 25.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.13.480 Cooperation, agreements to further chapter—Agreements to facilitate export. 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.

The director may enter into agreements with the United States department of agriculture for the issuance of phytosanitary certificates and other inspection documents, according to federal procedures, to facilitate the export of

nursery products from the state. [1993 c 120 § 18; 1971 ex.s. c 33 § 26.]

15.13.490 Compliance with chapter—Violation—Penalties. A person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for each violation. Each violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty provided in this section. [1990 c 261 § 14; 1985 c 36 § 6; 1971 ex.s. c 33 § 27.]

15.13.920 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive 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

15.14.010	Definitions.
15.14.020	Certifying officer—Rules.
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.
15.14.100	Departmental fees.
15.14.110	Certification as foundation or breeder seed—Requirements for certification of propagators' plant materials.
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 15.49.011.

(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. [1989 c 354 § 84; 1983 c 3 § 19; 1961 c 83 § 1.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

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 34.05 RCW

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 34.05 RCW concerning adjudicative proceedings. 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. [1989 c 175 § 44; 1961 c 83 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 nonexclusive 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 15.15

CERTIFIED SEED POTATOES

Sections

- 15.15.005 Legislative findings.
- 15.15.010 Restricted seed potato production area—Growers' petition—Department of agriculture—Director—Rules.
- 15.15.020 Violation or threatened violation of chapter—Action to enjoin.
- 15.15.900 Effective date—1997 c 176.

15.15.005 Legislative findings. The legislature finds that the production of high quality certified seed potatoes within the state requires conditions that are as free as possible from insect pests and plant diseases and that ensuring these conditions exist is in the public interest. The legislature further finds that the production of other potatoes intermixed with or in close proximity to a concentrated seed potato production area poses an increased risk of introduction of plant diseases and insect pests. [1997 c 176 § 1.]

15.15.010 Restricted seed potato production area—Growers' petition—Department of agriculture—Director—Rules. Growers of seed potatoes, certified in accordance with rules adopted under chapter 15.14 RCW, may submit a petition to the director of the department of agriculture requesting that the director establish a restricted seed potato production area. The petition shall include the proposed geographic boundaries of the restricted seed potato production area, and the types of restrictions that are proposed to apply to the growing of nonseed potatoes. The petition shall contain the signatures of at least fifty percent of the growers of certified seed potatoes who have produced at least fifty percent of the certified seed potatoes within the proposed restricted seed potato production area in each of the two preceding years.

Upon receipt of a petition submitted in accordance with this section, the director of the department of agriculture shall, within sixty days of receipt of the petition, investigate the need of establishing a restricted seed potato production area. The director may propose rules and hold public hearings in the area affected by the proposed rules. The director has the authority to adopt rules in accordance with chapter 34.05 RCW to establish restricted seed potato production areas to prevent the increased exposure to plant diseases and insect pests that adversely affect the ability to meet standards for certification of seed potatoes established under chapter 15.14 RCW. [1997 c 176 § 2.]

15.15.020 Violation or threatened violation of chapter—Action to enjoin. The director of the department of agriculture 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 a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1997 c 176 § 3.]

15.15.900 Effective date—1997 c 176. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 1997]. [1997 c 176 § 5.]

(1998 Ed.)

Chapter 15.17

STANDARDS OF GRADES AND PACKS

Sections

- 15.17.010 Purpose.
- 15.17.020 Definitions.
- 15.17.030 Enforcement—Director's duties—Rules.
- 15.17.050 Rules—Authority of director.
- 15.17.060 Adoption of standards.
- 15.17.080 Fresh fruits—Culls—Basket markings—Designation on bills of lading, invoices, etc.
- 15.17.090 Private grades or brands—Approval and registration.
- 15.17.140 Inspections and certifications—Request for—Fees.
- 15.17.143 Certificates of compliance—Petition by shipper—Rules.
- 15.17.150 Inspections and certifications—Fees adopted by rule—Failure to pay.
- 15.17.170 Inspection certificate or other official document as evidence.
- 15.17.190 Inspections—Right of access—Samples—Denial of access—Search warrants.
- 15.17.200 Noncomplying fruits or vegetables—Enforcement procedure—Notice—Hearing.
- 15.17.210 Fruits or vegetables—Unlawful practices when selling, offering for sale, or shipping—Containers—Director's powers—Rules.
- 15.17.213 Exemption of certain fruits or vegetables from chapter.
- 15.17.230 Fruit and vegetable inspection districts.
- 15.17.240 Collection, deposit and use of fees—Accounting.
- 15.17.243 District two—Transfer of funds—Control of *Rhagoletis pomonella*.
- 15.17.245 Fruit and vegetable inspection trust account.
- 15.17.260 Injunctions.
- 15.17.270 Cooperation with governmental agencies.
- 15.17.290 Violation of chapter or rules—Suspension—Civil penalty.
- 15.17.900 Provisions cumulative and nonexclusive.
- 15.17.940 Severability—1963 c 122.

Bread, weights and measures standards: RCW 19.92.100 through 19.92.120.

Grain and other commodities, standard grades: Chapter 22.09 RCW.

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 for the fair and orderly marketing of fruits and vegetables in the state of Washington by establishing uniform grades and standards and by providing for the inspection of these products. This chapter is vital to protecting the national and international reputation of fruit and vegetable products grown and shipped from this state and protecting consumers from the sale of inferior and misrepresented fruits and vegetables. 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. [1998 c 154 § 1; 1963 c 122 § 1.]

15.17.020 Definitions. For the purpose of this chapter:

(1) "Agent" means broker, commission merchant, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another.

(2) "Certification" means, but is not limited to, the issuance by the director of an inspection certificate or other official document stating the grade, classification, and/or condition of any fruits or vegetables, and/or if the fruits or vegetables are free of plant pests and/or other defects.

(3) "Combination grade" means two or more grades packed together as one, except cull grades, with a minimum percent of the product of the higher grade, as established by rule.

(4) "Compliance agreement" means an agreement entered into between the department and a shipper or packer, that authorizes the shipper or packer to issue certificates of compliance for fruits and vegetables.

(5) "Container" means any container or subcontainer used to prepackage any fruits or vegetables. This does not include a container used by a retailer to package fruits or vegetables sold from a bulk display to a consumer.

(6) "Deceptive arrangement or display" means any bulk lot or load, arrangement, or display of fruits or vegetables which has in the exposed surface, fruits or vegetables 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 the bulk lot or load, arrangement, or display.

(7) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface fruits or vegetables 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 fruits or vegetables whose size is not an accurate representation of the variation of the size of the fruits or vegetables in the entire container, even though the fruits or vegetables in the container are virtually uniform in size or comply with the specific standards adopted under this chapter.

(8) "Department" means the department of agriculture of the state of Washington.

(9) "Director" means the director of the department or his or her duly authorized representative.

(10) "District manager" means a person representing the director in charge of overall operation of a fruit and vegetable inspection district established under RCW 15.17.230.

(11) "Facility" means, but is not limited to, the premises where fruits and vegetables are grown, stored, handled, or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport fruits and vegetables.

(12) "Fruits and vegetables" means any unprocessed fruits or vegetables.

(13) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing fruits or vegetables that he or she has purchased or acquired from a producer.

(14) "Inspection" means, but is not limited to, the inspection by the director of any fruits or vegetables at any time prior to, during, or subsequent to harvest.

(15) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any wrapper, container, container label or lining, or any placard used in connection with and having reference to fruits or vegetables.

(16) "Person" means any individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee thereof.

(17) "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, 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.

(18) "Sell" means to sell, offer for sale, hold for sale, or ship or transport in bulk or in containers.

(19) "Standards" means grades, classifications, and other inspection criteria for fruits and vegetables. [1998 c 154 § 2; 1996 c 188 § 1; 1963 c 122 § 2.]

15.17.030 Enforcement—Director's duties—Rules.

(1) The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose.

(2) The director shall, whenever he or she considers the adoption of rules or amendments to existing rules, consult with growers, associations of growers or other industry associations, or other persons affected by such rules or amendments. [1998 c 154 § 3; 1963 c 122 § 3.]

15.17.050 Rules—Authority of director. (1) The director shall adopt rules providing standards for apples, apricots, Italian prunes, peaches, sweet cherries, pears, potatoes, and asparagus and may adopt rules providing standards for any other fruit or vegetable. When establishing these standards, the director shall consider the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury and other factors important to marketing.

(2) The director shall adopt rules providing for mandatory inspection of apples, apricots, Italian prunes, peaches, sweet cherries, pears, and asparagus and may adopt rules providing for mandatory inspection of any other fruit or vegetable.

(3) The director may adopt rules:

(a) Fixing the sizes and dimensions of containers to be used for the packing or handling of any fruits or vegetables; and

(b) Establishing combination grades for fruits and vegetables. The standards for combination grades shall, by percentage quantities, include two or more of the grades provided for under this chapter. [1998 c 154 § 4; 1963 c 122 § 5.]

15.17.060 Adoption of standards. The director may adopt any United States or other state's standard for any fruits and vegetables, if that standard is determined by the director to be substantially equivalent to or better than the standard adopted under this chapter. [1998 c 154 § 5; 1963 c 122 § 6.]

15.17.080 Fresh fruits—Culls—Basket markings—Designation on bills of lading, invoices, etc. It is unlawful for any person to sell for fresh consumption any fresh fruits 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. The baskets shall be

lided 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 in clear and legible letters at least two and one-half inches high. Every bill of lading, invoice, memorandum, and document referring to the fruit shall designate them as culls. [1998 c 154 § 6; 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 fruit or vegetable. The 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 under this chapter for the fruit or vegetable. [1998 c 154 § 7; 1963 c 122 § 9.]

15.17.140 Inspections and certifications—Request for—Fees. (1) Any person financially interested in any fruits or vegetables in this state may request inspection and/or certification services provided for those fruits or vegetables under this chapter.

(2) To facilitate the movement or sale of fruits and vegetables or other agricultural commodities, the director may provide, if requested by growers or other interested persons, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service.

(3) Persons requesting services shall be responsible for payment of fees for those services prescribed by the director under RCW 15.17.150. [1998 c 154 § 9; 1963 c 122 § 14.]

15.17.143 Certificates of compliance—Petition by shipper—Rules. Any shipper or packer of apples, apricots, cherries, pears, peaches, Italian prunes, potatoes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting this authority, on terms and conditions defined by rule. Certificates of compliance shall only be issued for fruits or vegetables that are in full compliance with this chapter and the rules adopted under this chapter. [1998 c 154 § 20.]

15.17.150 Inspections and certifications—Fees adopted by rule—Failure to pay. The director shall adopt rules establishing the necessary fees to recover the costs of providing inspection and/or certification or other requested services.

(1) The fees are due and payable upon billing.

(2) A late fee of one and one-half percent per month on the unpaid balance shall be assessed against persons more than thirty days in arrears.

(3) In addition to other penalties, the director may refuse to perform any inspection or certification service provided under this chapter for any person in arrears unless the person makes payment in full prior to such inspection or certification service.

(4) The director may refuse to perform inspection or certification service for any person who has failed to pay assessments required by law to any agricultural commodity commission. [1998 c 154 § 10; 1963 c 122 § 15.]

15.17.170 Inspection certificate or other official document as evidence. Every inspection certificate or other official document 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. [1998 c 154 § 11; 1963 c 122 § 17.]

15.17.190 Inspections—Right of access—Samples—Denial of access—Search warrants. The director may enter during business hours and inspect any facility where any fruits or vegetables are processed, stored, packed, delivered for shipment, loaded, shipped, being transported, or sold, and may inspect all fruits or vegetables and the containers and the equipment in that facility. The director may take for inspection representative samples of fruits or vegetables and containers as may be necessary to determine whether or not this chapter or rules adopted under this chapter have been violated. If the director is denied access to any facility, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the facility. The court may upon such application issue a search warrant for the purpose requested. [1998 c 154 § 12; 1963 c 122 § 19.]

15.17.200 Noncomplying fruits or vegetables—Enforcement procedure—Notice—Hearing. (1) For the purposes of this section, "lot" means any lot or any part of a lot.

(2) When the director determines that any lot of fruits or vegetables fails to comply with the requirements of this chapter, the director may issue a hold order prohibiting the sale or movement of that lot except under conditions that may be prescribed.

(3)(a) Written notice of the hold order must be provided to the person in possession of the lot of fruits or vegetables and a tag may be affixed to the lot or its containers. It is unlawful for any person except the director to alter, deface, or remove the tag or notice or to move or allow the lot of fruits or vegetables to be moved except under the conditions prescribed on the tag or notice.

(b) The notice shall include:

(i) A description of the lot that is in noncompliance;

(ii) The location of the lot;

(iii) The reason that the hold order is placed on the lot;

(iv) Any reconditioning, other corrective measures, or diversion to processing that may be required to release the lot for sale;

(v) Time frames to affect the reconditioning or other corrective measures; and

(vi) A reference to the violation of this chapter that provides the basis for the hold order.

(c) Any corrective measures required by the notice pursuant to (b)(iv) of this subsection and the costs associated therewith are the sole responsibility of the person holding the fruits or vegetables for sale.

(4) Upon issuance of a hold order by the director under this section, the seller or holder of the fruits or vegetables may request a hearing. The request for hearing must be in writing and filed with the director. Any hearing shall be held in conformance with RCW 34.05.422 and 34.05.479. [1998 c 154 § 13; 1987 c 202 § 172; 1963 c 122 § 20.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.17.210 Fruits or vegetables—Unlawful practices when selling, offering for sale, or shipping—Containers—Director's powers—Rules. It is unlawful:

(1) To sell any fruits or vegetables:

(a) As meeting the standards for any fruit or vegetable as prescribed by the director unless they in fact do so;

(b) For which no standards have been established under this chapter unless ninety percent or more by weight or count, as determined by the director, are free from plant pest injury that has penetrated or damaged the edible portions and from worms, mold, slime, or decay;

(c) In containers other than the size and dimensions prescribed by the director by rule;

(d) Unless the containers in which the fruits or vegetables are placed or packed are marked with the proper grade and additional information as may be prescribed by rule. The additional information may include:

(i) The name and address of the grower, or packer, or distributor;

(ii) The varieties of the fruits or vegetables;

(iii) The size, weight, and either volume or count, or both, of the fruits or vegetables;

(e) Which are in containers marked or advertised for sale or sold as being either graded or classified, or both, according to the standards prescribed by the director by rule unless the fruits or vegetables conform with the standards;

(f) Which are deceptively packed;

(g) Which are deceptively arranged or displayed;

(h) Which are mislabeled; or

(i) Which do not conform to this chapter or rules adopted under this chapter;

(2) For any person to ship or transport or any carrier to accept any lot of fruits or vegetables without an inspection certificate, permit, or certificate of compliance when the director has prescribed by rule that such products be accompanied by an inspection certificate, permit, or certificate of compliance. The inspection certificate, permit, or certificate of compliance shall be on a form prescribed by the director and may include methods of denoting that all assessments provided for by law have been paid before the fruits or vegetables may lawfully be delivered or accepted for shipment;

(3) For any person to refuse to submit any container, load, or display of fruits or vegetables for inspection by the director, or refuse to stop any vehicle or equipment containing such products for the purpose of inspection by the director; or

(4) For any person to move any fruits or vegetables or their containers to which any tag has been affixed, except as provided in RCW 15.17.200. [1998 c 154 § 14; 1994 c 67 § 2; 1963 c 122 § 21.]

15.17.213 Exemption of certain fruits or vegetables from chapter. (1) This chapter does not apply:

(a) To the movement in bulk of any fruits or vegetables from the premises where they are grown or produced to a packing shed, warehouse, or processing plant for the purpose of storing, grading, packing, labeling, or processing prior to entering commercial channels for wholesale or retail sale;

(b) To any processed, canned, frozen, or dehydrated fruits or vegetables;

(c) To any infected or infested fruits or vegetables to be manufactured into byproducts or to be shipped to a byproducts plant; or

(d) To the sale of up to five hundred pounds per day of any fruit or vegetable by any producer or handler directly to an individual ultimate consumer unless otherwise established by rule for an individual commodity. These fruits and vegetables shall meet the requirements of RCW 15.17.210(1)(b).

(2) The inspection requirements of this chapter do not apply to the sale or transportation within a zone of production, as defined by rule, of any fruit or vegetable named in RCW 15.17.050(1) or any combination of those fruits and vegetables to a fruit or produce stand or farmers market in a quantity specified by the director by rule. [1998 c 154 § 8; 1963 c 122 § 13. Formerly RCW 15.17.130.]

15.17.230 Fruit and vegetable inspection districts.

For the purpose of this chapter the state shall be divided into not less than three fruit and vegetable inspection districts to which the director may assign a district manager who shall supervise and administer regulatory and inspection affairs of the districts. The director, by rule, shall establish the boundaries of the districts and may adjust the boundaries for purposes of efficiency and economy. [1998 c 154 § 15; 1986 c 203 § 2; 1975 1st ex.s. c 7 § 1; 1969 ex.s. c 76 § 2; 1963 c 122 § 23.]

Severability—1986 c 203: See note following RCW 15.17.245.

15.17.240 Collection, deposit and use of fees—Accounting. (1) The district managers shall collect the fees provided for under this chapter and deposit them in the fruit and vegetable district fund in any bank in the district approved for the deposit of state funds. The fees shall be used to carry out the provisions of this chapter and no appropriation is required for disbursement from the fund. District managers shall approve payments from the fruit and vegetable inspection district funds to the fruit and vegetable inspection trust account in accordance with RCW 15.17.245. On a monthly basis, each district manager shall provide to the director a detailed account of the receipts and disbursements for the preceding month.

(2) Assessments and other fees approved by the director or authorized by law and collected by the district managers shall be deposited in the fruit and vegetable inspection district funds and distributed to the appropriate fund or agency. [1998 c 154 § 16; 1975 c 40 § 3; 1963 c 122 § 24.]

15.17.243 District two—Transfer of funds—Control of *Rhagoletis pomonella*. The inspector-at-large for district two as defined in WAC 16-458-075 is authorized to transfer two hundred thousand dollars from the horticultural district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of *Rhagoletis pomonella* in district two. The transfer of funds shall occur by June 1, 1997. On June 30, 1999, any unexpended portion

of the two hundred thousand dollars shall be returned to the horticultural district fund. [1997 c 227 § 1.]

Effective date—1997 c 227: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 1997]." [1997 c 227 § 3.]

15.17.245 Fruit and vegetable inspection trust account. The director shall establish a fruit and vegetable inspection trust account to be derived from fruit and vegetable inspection district funds. The director shall adjust district payments so that the balance in the trust account shall not exceed three hundred thousand dollars. The director is authorized to make payments from the trust account to:

(1) Pay fees and expenses provided in the inspection agreement between the department and the agricultural marketing service of the United States department of agriculture;

(2) Assist fruit and vegetable inspection districts in temporary financial distress as a result of less than normal production of fruits and vegetables. Districts receiving such assistance shall repay the trust account as district funds permit. Temporary financial distress and terms of the trust account repayment shall be determined by the director;

(3) Pay necessary administrative expenditures for the commodity inspection division attributable to the supervision of the fruit and vegetable inspection services. [1998 c 154 § 19; 1987 c 393 § 2; 1986 c 203 § 1; 1969 ex.s. c 76 § 1; 1961 c 11 § 15.04.100. Prior: 1959 c 152 § 1; 1957 c 163 § 1. Formerly RCW 15.04.100.]

Severability—1986 c 203: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 203 § 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 of Thurston county or of any county in which such violation occurs, notwithstanding the existence of other remedies at law. [1998 c 154 § 17; 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.]

15.17.290 Violation of chapter or rules—Suspension—Civil penalty. Any person who violates this chapter or rules adopted under this chapter may be subject to:

(1) Suspension of any compliance agreement under this chapter to which the person is a party for a period not to exceed twelve consecutive months; and/or

(2) A civil penalty in an amount of not more than one thousand dollars for each violation. [1998 c 154 § 18; 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.]

15.17.940 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.]

Chapter 15.19 GINSENG

Sections

15.19.010	Definitions.
15.19.020	Enforcement of chapter.
15.19.030	Adoption of rules.
15.19.040	Fees established by rule—Deposit—Use—Failure to pay.
15.19.050	Inspection of facility—Entry—Samples—Search warrant.
15.19.060	Injunctions.
15.19.070	Cooperative agency agreements.
15.19.080	Public disclosure of information—Exemption.
15.19.090	Violations of chapter or rules—Unlawful.
15.19.100	Violations of chapter or rules—Penalties.
15.19.110	Remedies.
15.19.900	Severability—1998 c 154.

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

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly authorized representative.

(3) "Facility" means, but is not limited to, the premises where ginseng is grown, stored, dried, handled, or delivered for sale or transportation, or where records required by rule under this chapter are stored or kept, and all vehicles and equipment, whether aerial or surface, used to transport ginseng.

(4) "Grower" means a person who grows cultivated, wild simulated, and/or woodsgrown American ginseng and sells it to a dealer.

(5) "Person" means any individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee thereof. [1998 c 154 § 21.]

15.19.020 Enforcement of chapter. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. [1998 c 154 § 22.]

15.19.030 Adoption of rules. In addition to the powers conferred on the director under this chapter, the director has the power to adopt rules:

(1) Establishing certification requirements for American ginseng (*Panax quinquefolius* L.).

Certification factors include:

(a) Place of origin;

(b) Whether the ginseng is wild or cultivated;

(c) Weight; and

(d) Date of harvest;

and may include whether the ginseng meets requirements for freedom from infestation by plant pests as required by the importing country;

(2) Requiring the registration of ginseng growers and of dealers who purchase and/or sell American ginseng for the purpose of foreign export; and

(3) Requiring that records be maintained by ginseng growers and by dealers who purchase or sell American ginseng for the purpose of foreign export.

The director may adopt any other rules necessary to comply with the requirements of the convention on international trade in endangered species of wild fauna and flora (27 U.S.T. 108); the endangered species act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.); and 50 C.F.R. Part 23 (1995), as they existed on June 6, 1996, or a subsequent date as may be provided by rule, consistent with the purposes of this section. [1998 c 154 § 23.]

15.19.040 Fees established by rule—Deposit—Use—Failure to pay. (1) The director shall adopt rules establishing fees to recover the costs of providing ginseng certification activities authorized under this chapter. All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out the purposes of this chapter and rules adopted under this chapter.

(2) In addition to other penalties, the director may refuse to perform any inspection or certification service authorized under this chapter for any person in arrears unless the person makes payment in full prior to performing the service. [1998 c 154 § 24.]

15.19.050 Inspection of facility—Entry—Samples—Search warrant. The director may enter at reasonable times as determined by the director and inspect any facility and any records required under this chapter. The director may take for inspection those representative samples of ginseng necessary to determine whether or not this chapter or rules adopted under this chapter have been violated. If the director is denied access to any facility or records, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the facility or records. The court may upon such application issue a search warrant for the purpose requested. [1998 c 154 § 25.]

15.19.060 Injunctions. The director may bring an action to enjoin any violation of this chapter or rule adopted under this chapter in the superior court of Thurston county or of any county in which a violation occurs, notwithstanding the existence of other remedies at law. [1998 c 154 § 26.]

15.19.070 Cooperative agency agreements. 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. [1998 c 154 § 27.]

15.19.080 Public disclosure of information—Exemption. The department shall not disclose information obtained under this chapter regarding the purchases, sales, or

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production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service. This information is exempt from public disclosure required by chapter 42.17 RCW. [1998 c 154 § 28.]

15.19.090 Violations of chapter or rules—Unlawful. It is unlawful for a person to sell, offer for sale, hold for sale, or ship or transport American ginseng for foreign export in violation of this chapter or rules adopted under this chapter. [1998 c 154 § 29.]

15.19.100 Violations of chapter or rules—Penalties. Any person who violates the provisions of this chapter or rules adopted under this chapter may be subject to:

(1) A civil penalty in an amount of not more than one thousand dollars for each violation; and/or

(2) Denial, revocation, or suspension of any registration or application for registration issued under this chapter. Upon notice by the director to deny, revoke, or suspend a registration or application for registration, a person may request a hearing under chapter 34.05 RCW. [1998 c 154 § 30.]

15.19.110 Remedies. The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy. [1998 c 154 § 31.]

15.19.900 Severability—1998 c 154. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 154 § 32.]

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

15.24.010	Definitions.
15.24.020	Commission created—Generally.
15.24.030	Members—Election—Terms—District subdivisions—Meetings.
15.24.040	Members—Nominations.
15.24.050	Vacancies—Quorum—Compensation—Travel expenses.
15.24.060	Commission records as evidence.
15.24.070	Powers and duties.
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15.24.100	Assessments levied.
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15.24.180	Enforcement.
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15.24.200	Penalties.
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15.24.800	Financing assistance for commission building.
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15.24.804	Bond issuance and sale.
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15.24.808	Expenditure of bond proceeds.
15.24.810	Fund for payment of bond principal and interest.
15.24.812	Certification and payment of bond principal and interest.
15.24.814	RCW 15.24.810 and 15.24.812 not exclusive method of payment.
15.24.816	Bonds constitute legal investments for state and other public funds.
15.24.818	Bonds to be issued only after certification of sufficiency of funds.
15.24.900	Purpose of chapter.
15.24.910	Liberal construction.
15.24.920	Severability—1967 c 240.

Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 15.66.185.

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, powder-

ing, 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) "Grower district No. 1" includes the counties of Chelan, Okanogan, and Douglas;

(10) "Grower district No. 2" includes the counties of Kittitas, Yakima, Benton, and Franklin;

(11) "Grower district No. 3" includes all counties in the state not included in the first and second districts;

(12) "Dealer district No. 1" includes the area of the state north of Interstate 90;

(13) "Dealer district No. 2" includes the area of the state south of Interstate 90; and

(14) "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. [1989 c 354 § 53; 1967 c 240 § 22; 1963 c 145 § 1; 1961 c 11 § 15.24.010. Prior: 1937 c 195 § 2; RRS § 2874-2.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.24.020 Commission created—Generally. 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, currently operates a commercial producing orchard in the district represented, 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, and are engaged as apple dealers in the district represented. The qualifications of members of the commission as herein set forth must continue during their term of office. [1989 c 354 § 54; 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.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.24.030 Members—Election—Terms—District subdivisions—Meetings. Thirteen persons with the qualifications stated in RCW 15.24.020 shall be elected members of said commission. Four of the grower members, being positions one, two, three and four, shall be from grower 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 grower district No. 2; and one grower member, being position nine from grower district No. 3. Two of the dealer members, being positions ten and eleven, shall be from dealer district No. 1; and two of the dealer members, being positions twelve and thirteen, shall be from dealer district No. 2.

The commission shall have authority in its discretion to establish by regulation one or more subdivisions of grower district No. 1 and one or more subdivisions of grower 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 inequitable voting situation or an unfair or inequitable 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. [1989 c 354 § 55; 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.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.24.040 Members—Nominations. The director shall call a meeting of apple growers, and meetings of apple dealers in dealer district No. 1 and dealer 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 meeting of the Washington state horticultural association, or the annual meeting of any other producer organization which represents a majority of the state's apple producers, as determined by the commission, but not while the same is 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 within the district or subdivision being represented, 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 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. [1989 c 354 § 56; 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.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.24.050 Vacancies—Quorum—Compensation—Travel expenses. 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 the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 12; 1975-'76 2nd ex.s. c 34 § 12; 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.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

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 chair and such other officers as it deems advisable; and to adopt, rescind, and amend rules and orders for the exercise of its powers under this chapter, 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 of this chapter;

(6) To conduct scientific research to develop and discover the health, food, therapeutic, and dietetic value of apples and apple products;

(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;

(9) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(10) To borrow money and incur indebtedness;

(11) To accept gifts, grants, conveyances, bequests, and devises, of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms. The commission shall adopt rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all such gifts, grants, conveyances, bequests, and devises. The authority to make expenditures granted by this subsection includes the authority to make expenditures to provide scholarships or financial assistance to persons as defined in RCW 1.16.080 or entities associated with the apple industry, but is not limited to the authority to make expenditures for such a purpose; and

(12) To engage in appropriate fund-raising activities for the purpose of supporting the activities of the commission authorized by this chapter. [1994 c 134 § 1; 1987 c 393 § 3; 1986 c 203 § 3; 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.]

Severability—1986 c 203: See note following RCW 15.17.245.

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 RCW 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 department of labor and industries 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. [1994 c 164 § 1; 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 Increase in assessments—Grounds—Procedure. If it appears from investigation by the commission that the revenue from the assessment levied on fresh apples under this chapter is inadequate to accomplish the purposes of this chapter, the commission shall adopt a resolution setting forth the necessities of the industry, the extent and probable cost of the required research, market promotion, and advertising, the extent of public convenience, interest, and necessity, and probable revenue from the assessment levied. It shall thereupon increase the assessment to a sum determined by the commission to be necessary for those purposes based upon a rate per one hundred pounds of apples, gross billing weight, shipped in bulk, container, or any style of package. An increase becomes effective sixty days after the resolution is adopted or on any other date provided for in the resolution, but 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 the growers voting on it and also be approved by voting growers who operate more than fifty percent of the acreage voted in the same election. After the mail ballot, if favorable to the increase, the commission shall nevertheless exercise its independent judgment and discretion as to whether or not to approve the increase. [1983 c 95 § 1; 1979 c 20 § 1; 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 pursuant to the provisions of RCW 34.05.040. [1975 1st ex.s. c 7 § 37; 1961 c 11 § 15.24.170. Prior: 1937 c 195 § 18; RRS § 2874-18.]

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 Claims enforceable against commission assets—Nonliability of other persons and entities—Exception. 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 exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee, or agent of the commission in his or her individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees may 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 may 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 is liable for the default of any other member. [1987 c 393 § 4; 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.]

15.24.800 Financing assistance for commission building. The legislature hereby finds that, in order to permit the Washington state apple advertising commission to accomplish more efficiently its important public purposes, as enumerated in chapter 15.24 RCW, it is necessary for the state to assist in financing a new building for the commission, to be located on Euclid Avenue in Chelan county, and housing commission offices, warehouse space, and a display room. The state's assistance shall augment approximately five hundred thousand dollars in commission funds which will be applied directly to the payment of the costs of this project. The state's assistance shall be in the amount of eight hundred thousand dollars, or so much thereof as may be required, to be provided from the proceeds from the sale and issuance of general obligation bonds of the state, the principal of and interest on which shall be reimbursed to the state treasury by the commission from revenues derived from the assessments levied pursuant to chapter 15.24 RCW and other sources. [1987 c 6 § 1.]

Severability—1987 c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 6 § 12.]

15.24.802 General obligation bonds to fund commission building. For the purpose of providing part of the funds necessary for the Washington state apple advertising commission to undertake a capital project consisting of the land acquisition for, and the design, construction, furnishing, and equipping of, the building described in RCW 15.24.800, and to pay the administrative costs of such project, including costs of bond issuance and retirement, salaries and related costs of officials and employees of the state, and other expenses incidental to the administration of such project, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eight hundred thousand dollars, or so much thereof as may be required. [1987 c 6 § 2.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.804 Bond issuance and sale. The bonds authorized in RCW 15.24.802 shall be issued and sold in

accordance with the provisions of chapter 39.42 RCW. [1987 c 6 § 3.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.806 Bond proceeds, etc., to state building construction account. The proceeds from the sale of the bonds authorized in RCW 15.24.802, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the Washington state apple advertising commission may direct the state treasurer to deposit therein, shall be deposited in the state building construction account in the state treasury. [1987 c 6 § 4.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.808 Expenditure of bond proceeds. Subject to legislative appropriation, all proceeds from the sale of the bonds authorized in RCW 15.24.802 shall be administered and expended by the Washington state apple advertising commission exclusively for the purposes specified in RCW 15.24.802. [1987 c 6 § 5.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.810 Fund for payment of bond principal and interest. The state general obligation bond retirement fund shall be used for the payment of the principal of and interest on the bonds authorized to be issued under RCW 15.24.802. The state finance committee may provide for the creation of one or more separate accounts in such fund to facilitate payment of such principal and interest.

On or before June 30 of each year, the state finance committee shall certify to the state treasurer the amounts required in the next succeeding twelve months for the payment of the principal of and the interest on such bonds coming due in accordance with the provisions of the bond proceedings. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, the amount certified by the state finance committee to be due on the payment date. [1987 c 6 § 6.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.812 Certification and payment of bond principal and interest. On or before June 30 of each year, the state finance committee shall certify to the Washington state apple advertising commission the principal and interest payments determined under RCW 15.24.810, exclusive of deposit interest credit, attributable to the bonds issued under RCW 15.24.802. On each date on which any interest or principal and interest payment is due, the commission shall cause the amount certified by the state finance committee to be due on such date to be paid out of the commission's general fund to the state treasurer for deposit into the general fund of the state treasury. [1987 c 6 § 7.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.814 RCW 15.24.810 and 15.24.812 not exclusive method of payment. The legislature may provide

additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 15.24.802, and RCW 15.24.810 and 15.24.812 shall not be deemed to provide an exclusive method for the payment of such principal and interest. [1987 c 6 § 8.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.816 Bonds constitute legal investments for state and other public funds. The bonds authorized by RCW 15.24.802 shall constitute legal investments for all state funds or for funds under state control and all funds of any other public body. [1987 c 6 § 9.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.818 Bonds to be issued only after certification of sufficiency of funds. The bonds authorized by RCW 15.24.802 shall be issued only after the treasurer of the Washington state apple advertising commission has certified that the net proceeds of the bonds, together with all money to be made available by the commission for the purposes described in RCW 15.24.802, shall be sufficient for such purposes; and also that, based upon the treasurer's estimates of future income from assessments levied pursuant to chapter 15.24 RCW and other sources, an adequate balance will be maintained in the commission's general fund to enable the commission to meet the requirements of RCW 15.24.812 during the life of the bonds to be issued. [1987 c 6 § 10.]

Severability—1987 c 6: See note following RCW 15.24.800.

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 distri-

bution 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

Sections

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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 and administer specific industry service programs, including but not limited to sanitation programs, 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. [1983 c 281 § 1; 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.

(5) "Sanitation program" means a program designed to eliminate pests and/or plants or trees which serve as hosts to pests or diseases of tree fruits. [1983 c 281 § 2; 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—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 13; 1975-'76 2nd ex.s. c 34 § 13; 1969 c 129 § 10.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08 115.

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 34.05 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.]

15.26.125 Assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW—Washington tree fruit research commission. The Washington tree fruit research commission may raise the assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of two dollars per ton in effect under chapter 16-560 WAC on July 1, 1995, to four dollars per ton. The commission may also establish an additional assessment on all tree fruits under RCW 15.26.155 of not more than eight cents per ton.

The assessment limits established by this section are set solely to provide prior legislative authority for the purposes of RCW 43.135.055 and may not be construed as providing a limitation on the authority of the tree fruit research commission to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under the authority of this section shall be made in compliance with the procedural requirements established by this chapter for altering or amending such assessments. [1995 c 109 § 2.]

Effective date—1995 c 109: See note following RCW 15.65.405.

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.]

15.26.155 Additional assessment. The producers of 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, establish an additional assessment for programs including but not limited to sanitation programs and the reregistration of plant protection products for use on minor crops. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend all or part of the assessments on tree fruit under this section. [1991 c 257 § 2; 1983 c 281 § 3.]

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.]

15.26.235 Collection, administration, and dispersal of funds for industry service programs. Funds collected and expenditures made for specific industry service programs shall be collected, administered, and dispersed separately from all other funds authorized and collected for research by the commission. The commission may appoint a committee

to advise them regarding the need for specific industry service programs and regarding the administration of the assessments collected under RCW 15.26.155. [1983 c 281 § 4.]

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 admissi-

ble 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, which includes all varieties of nectarines. "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. [1989

c 354 § 27; 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.]

Severability—1989 c 354: See note following RCW 15.36.012.

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.] For codification of 1967 c 191, see Codification Tables, Volume 0.

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 34.05 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—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 14; 1975-'76 2nd ex.s. c 34 § 14; 1967 c 191 § 5; 1961 c 11 § 15.28.090. Prior: 1947 c 73 § 10; Rem. Supp. 1947 § 2909-19.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

Effective date—1967 c 191: 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—Exemption—Brined sweet cherries assessable. An annual assessment is hereby levied upon all commercial soft tree fruits grown in the state or packed as Washington soft tree fruit 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. [1989 c 354 § 28; 1963 c 51 § 3; 1961 c 11 § 15.28.160. Prior: 1947 c 73 § 18; Rem. Supp. 1947 § 2909-27.]

Severability—1989 c 354: See note following RCW 15.36.012.

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 specific fruit or classification—Procedure. (1) 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 that fruit, or any classification thereof, for any year or years, the commission may levy such assessment for that year or years up to the maximum of eighteen 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 thirty dollars for each two thousand pounds, and except pears covered by this chapter, as to which the assessment may be increased to a maximum of eighteen dollars for each two thousand pounds: PROVIDED, That no increase in the assessment on pears becomes effective unless the increase is first referred by the commission to a referendum by the Bartlett pear growers of the state and is approved by a majority of the growers voting on the referendum. The method and procedure of conducting the 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 has the authority in its discretion to exempt in whole or in part from future assessments under this chapter, during such period as the commission may prescribe, any of the soft tree fruits or any particular strain or classification of them.

(2) An assessment levied under this chapter may be increased in excess of the fiscal growth factor as determined

under chapter 43.135 RCW if the assessment is submitted by referendum to the growers who are subject to the assessment and the increase is approved by a majority of those voting on the referendum. The method and procedure of conducting the referendum shall be determined by the commission. [1997 c 303 § 3; 1992 c 87 § 1; 1983 1st ex.s. c 73 § 1; 1977 ex.s. c 8 § 1; 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.]

Findings—1997 c 303: See note following RCW 43.135.055.

Effective date—1997 c 303 §§ 1-3: See note following RCW 43.135.055.

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 Rules and regulations—Filing—Publication. Every rule, regulation, or order promulgated by the commission shall be filed with the director, and shall be published in a legal newspaper of general circulation in each of the three districts. All such rules, regulations, or orders shall become effective pursuant to the provisions of RCW 34.05.380. [1985 c 469 § 7; 1975 1st ex.s. c 7 § 38; 1961 c 11 § 15.28.300. Prior: 1947 c 73 § 31; Rem. Supp. 1947 § 2909-40.]

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

Sections

15.30.010	Definitions.
15.30.020	Annual license required—Expiration date.
15.30.030	Application for license, contents—Issuance, prerequisites.
15.30.040	Annual license fee.
15.30.050	Enforcement—Rules authorized, procedure.
15.30.060	Oxygen content, temperature, and time period to be maintained—Classification of fruits, vegetables as controlled atmosphere stored.
15.30.070	License renewal date—Penalty for late renewal, exception.
15.30.080	Denial, suspension, revocation of license—Grounds—Hearing required.

- 15.30.090 Denial, suspension, revocation of license—Hearings subject to Administrative Procedure Act.
- 15.30.100 Subpoenas—Witnesses and fees.
- 15.30.110 Issuance of warehouse number—Use of letters "CA"—Marking containers with letters and number.
- 15.30.120 Licensee to make daily determination of air components—Record, form, contents.
- 15.30.130 Identity of fruit and vegetables to be maintained by CA number and inspection number to retail market.
- 15.30.140 Maturity and condition standards may be higher than for fruit and vegetables not subject to chapter.
- 15.30.150 Minimum condition and maturity standards for apples.
- 15.30.160 Inspection, certification prior to using "CA" or similar designation—Eradication required, when.
- 15.30.170 Inspection, certification may be requested by financially interested person.
- 15.30.180 Fees for inspection and certification.
- 15.30.190 Certificate as evidence.
- 15.30.200 Disposition of fees.
- 15.30.210 Unlawful sales, acts, or use of words "controlled atmosphere storage" and terms of similar import.
- 15.30.220 Injunctions authorized.
- 15.30.230 Chapter cumulative and nonexclusive.
- 15.30.240 Prior civil or criminal liability not affected.
- 15.30.250 Penalties for violating chapter.
- 15.30.260 Cooperation, agreements with other governmental agencies.
- 15.30.900 Fruits and vegetables in storage prior to enactment of chapter.
- 15.30.910 Severability—1961 c 29.

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 prescribed by the director by rule. [1988 c 254 § 6; 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 34.05 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 29 § 5.]

15.30.060 Oxygen content, temperature, and time period to be maintained—Classification of fruits, vegetables as controlled atmosphere stored. 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 forty-five days for Gala and Jonagold varieties and not less than ninety days for other apples. [1994 c 23 § 1; 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 34.05 RCW concerning adjudicative proceedings. [1989 c 175 § 45; 1961 c 29 § 9.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 subcontainer 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 nonexclusive 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

Sections

15.32.610 Employment of unlicensed person as dairy technician—
Offenses concerning examination of reports—Penalty.

15.32.610 Employment of unlicensed person as dairy technician—Offenses concerning examination of reports—Penalty. [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.] Recodified as RCW 15.36.431 pursuant to 1994 c 143 § 514; and also repealed by 1994 c 143 § 513.

Reviser's note: This section was also amended by 1994 c 143 § 504 without cognizance of the repeal thereof. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Chapter 15.35

WASHINGTON STATE MILK POOLING ACT

Sections

15.35.010 Short title.
15.35.030 Declaration of public interest.
15.35.060 Purposes.
15.35.070 Powers conferred to be liberally construed—Monopoly—
Price setting.
15.35.080 Definitions.
15.35.090 Milk control between states.
15.35.100 Director's authority—Subpoena power—Rules
15.35.105 Minimum milk price—Competition from outside the market-
ing area.
15.35.110 Referendum on establishing or discontinuing market area
pooling arrangement.
15.35.115 Referendum on establishing or discontinuing market area
pooling arrangement—Producer-dealers.
15.35.120 Qualifications for producers to sign petitions or vote in
referendums.

- 15.35.130 Form of producer petitions.
- 15.35.140 Director to establish systems within market areas.
- 15.35.150 Determination of quota.
- 15.35.160 Contracts, rights and powers of associations not affected.
- 15.35.170 Quotas—Transfer of—Limitations.
- 15.35.180 Records of milk dealers and cooperatives, inspection and audit of.
- 15.35.190 Records necessary for milk dealers.
- 15.35.200 Verified reports of milk dealers.
- 15.35.210 Milk dealer license—Required.
- 15.35.220 Milk dealer license—Application for—Contents.
- 15.35.230 Milk dealer license—Fees—Additional assessment for late renewal.
- 15.35.240 Milk dealer license—Denial, suspension, or revocation of—Grounds.
- 15.35.250 Marketing assessment on producers—Additional assessment for milk testing—Penalty—Court action.
- 15.35.260 Records and reports of licensees for assessment purposes.
- 15.35.270 Assessment due date.
- 15.35.280 Separate account for each marketing plan—Deductions for departmental costs.
- 15.35.290 Court actions to implement.
- 15.35.300 General penalty—Misdemeanor—Exception.
- 15.35.310 Certain producer-dealers exempt.
- 15.35.900 Severability—1971 ex.s. c 230.

15.35.010 Short title. This chapter may be known and cited as the Washington state milk pooling act to provide for equitable pricing and pooling among producers and processors of milk and milk products. [1993 c 345 § 1; 1971 ex.s. c 230 § 1.]

15.35.030 Declaration of public interest. It is hereby declared that:

(1) Milk is a necessary article of food for human consumption;

(2) The production, distribution, 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;

(3) It is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of adequate supplies of pure and wholesome milk and milk products necessary to its citizens, to promote competitive prices, and to eliminate economic waste, destructive trade practices, and improper accounting for milk purchased from producers;

(4) Economic factors concerning the production, marketing, and sale of milk in the state may not be accurately reflected in federal programs;

(5) Conditions within the milk industry of this state are such that it may be necessary to establish marketing areas wherein pricing and 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. [1993 c 345 § 2; 1991 c 239 § 1; 1971 ex.s. c 230 § 3.]

15.35.060 Purposes. The purposes of this chapter are to:

(1) Authorize and enable the director to prescribe marketing areas and to establish pricing and pooling arrangements which are necessary to prevent disorderly marketing of milk 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, in accordance with chapter 34.05 RCW, which provide for pricing and 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. [1993 c 345 § 3; 1991 c 239 § 2; 1971 ex.s. c 230 § 6.]

15.35.070 Powers conferred to be liberally construed—Monopoly—Price setting. 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, nor shall this chapter give the director authority to establish wholesale or retail prices for processed milk products. [1993 c 345 § 5; 1991 c 239 § 3; 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 the director's 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 or another state comprising one or more counties 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 from cows as defined in chapter 15.36 RCW and rules adopted under chapter 15.36 RCW;

(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 or her capacity as the operator of a milk plant, as that term is defined in chapter 15.36 RCW and rules adopted under chapter 15.36 RCW:

(a) Who receives milk in an unprocessed state from dairy farms, and who processes milk into milk or milk products; and

(b) Whose milk plant is located within the state or from whose milk plant milk or milk products that are produced at least in part from milk from producers are disposed of to any place or establishment within a 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 or, if the director so provides by rule, a person who markets to a milk dealer milk produced under a grade A permit issued by another state;

(9) "Classification" means the classification of milk into classes according to its utilization by the department;

(10) The terms "plan," "market area and pooling arrangement," "market area pooling plan," "market area and pooling plan," "market pool," and "market plan" all have the same meaning;

(11) "Producer-dealer" means a producer who engages in the production of milk and also operates a plant from which an average of more than three hundred pounds daily of milk products, except filled milk, is sold within the marketing area and who has been so designated by the director. A state institution which processes and distributes milk of its own production shall be considered a producer-dealer for purposes of this chapter, but the director may by rule exempt such state institutions from any of the requirements otherwise applicable to producer-dealers. [1994 c 143 § 509; 1993 c 345 § 4; 1992 c 58 § 1; 1991 c 239 § 4; 1971 ex.s. c 230 § 8.]

15.35.090 Milk control between states. (1) 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.

(2) In order to facilitate carrying out the provisions and purposes of this chapter, the department may hold joint hearings with authorized officers or agencies of other states who have duties and powers similar to those of the department or with any authorized person designated by the United States department of agriculture, and may enter into joint agreements with such authorized state or federal agencies for exchange of information with regard to prices paid to producers for milk moving from one state to the other or any purpose to carry out and enforce this chapter. [1991 c 239 § 5; 1971 ex.s. c 230 § 9.]

15.35.100 Director's authority—Subpoena power—Rules. Subject to the provisions of this chapter, 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 shall have the authority to:

(a) Establish classifications of processed milk and milk products, and a minimum price or a formula to determine a minimum price to be paid by milk dealers for milk used to produce each such class of products;

(b) Require that payment be made by dealers to producers of fluid milk or their cooperative associations and prescribe the method and time of such payments by dealers to producers or their cooperative associations in accordance with a marketing plan for milk;

(c) Determine what constitutes a natural milk market area;

(d) Establish quota systems within marketing plans, and to determine by using uniform rules, what portion of the

milk produced by each producer shall be assigned to each quota classification;

(e) Provide for the pooling of minimum class values from the sales of each class of milk to milk dealers, and the equalization of returns to producers;

(f) Provide and establish market pools for a designated market area with such rules as the director may adopt;

(g) Employ an executive officer, who shall be known as the milk pooling administrator;

(h) Employ such persons or contract with such entities as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

(i) Determine by rule, what portion of any increase in the available quotas shall be assigned to 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.

(3) To make, adopt, and enforce all rules necessary to carry out the purposes and policies of this chapter subject to the provisions of chapter 34.05 RCW concerning the adoption of rules. 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. [1993 c 345 § 6; 1991 c 239 § 6; 1971 ex.s. c 230 § 10.]

15.35.105 Minimum milk price—Competition from outside the marketing area. (1) In establishing a minimum milk price or a formula to determine a minimum milk price, as provided under RCW 15.35.060 and 15.35.100, the director shall, in addition to other appropriate criteria, consider the:

(a) Cost of producing fluid milk for human consumption;

(b) Transportation costs;

(c) Milk prices in states or regions outside of the state that influence prices within the marketing areas;

(d) Demand for fluid milk for human consumption;

(e) Alternative enterprises available to producers; and

(f) Economic impact on milk dealers.

(2) A milk dealer who believes that actual competition from outside the marketing area is having a significant economic impact on that milk dealer, may petition the director for a public hearing on an expedited basis to consider whether the minimum milk price in the market plan should be changed relative to the milk price to a competitor located outside the state plus transportation costs for that competitor to compete with the petitioning milk dealer.

(a) To be considered, the petition must identify the specific action requested, and must be accompanied by a statement summarizing the facts and evidence that would be provided at a public hearing by or on behalf of the petitioner to support the need for the requested action, including an identification of circumstances that have changed since the

last rule-making proceeding at which the minimum price was established.

(b) Within twenty-one days of receiving the petition, the director shall either:

(i) Adopt rules on an emergency basis, in accordance with RCW 34.05.350;

(ii) File, and distribute to all milk dealers and other interested parties, notice that a hearing will be held within sixty days of receiving the petition;

(iii) Advise the petitioner in writing that the request for rule making is denied, and explain the reasons for the denial; or

(iv) Advise the petitioner in writing that the petition provides insufficient information from which to find that rule making should be initiated, and request that the petition be resubmitted with additional information.

(c) Except as otherwise specifically provided in this section, this petition must be handled in accordance with RCW 34.05.330, and the rule-making procedures of chapter 34.05 RCW.

(3) The director may adopt rules of practice or procedure with respect to the proceedings. [1993 c 345 § 7; 1991 c 239 § 7.]

15.35.110 Referendum on establishing or discontinuing market area pooling arrangement. (1) The director, either upon his or her 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 be established, a referendum of affected individual producers and milk dealers shall be conducted by the department.

(2) In order for the director to establish a market area and pooling plan:

(a) Sixty-six and two-thirds percent of the producers and producer-dealers that vote must be in favor of establishing a market area and pooling plan;

(b) Sixty-six and two-thirds percent of the milk dealers and producer-dealers that vote must be in favor of establishing a market area and pooling plan; and

(c) Producer-dealers providing notice to the director under RCW 15.35.115(1), shall be authorized to vote both as producers and as milk dealers.

(3) Except as provided in subsection (4) of this section, the director, within ninety days from the date the results of a referendum approved under subsection (2) of this section are filed with the secretary of state, shall adopt rules to establish a market pool in the market area, as provided for in this chapter. In conducting hearings on rules proposed for adoption under this subsection, the director shall invite public comment on whether milk regulation similar to the market area pooling plan proposed in the rules exists in neighboring states and whether a lack of such milk regulation in neighboring states would render such a market area pooling plan in this state ineffective or impractical.

(4) If, following hearings held under subsection (3) of this section, the director determines that the lack of milk regulation in neighboring states similar to the market area pooling plan proposed for this state would render such a

pooling arrangement in this state ineffective or impractical, the director shall so state in writing. The director shall file the statement with the code reviser for publication in the Washington State Register. In such a case, a market area pooling plan shall not be established in the market area under subsection (3) of this section based upon the referendum that precipitated the hearings.

If the director determines that such a lack of milk regulation in neighboring states would not render such a market area pooling plan ineffective or impractical in this state, the director shall adopt rules in accordance with subsection (3) of this section.

(5) If fifty-one percent of the producers and producer-dealers voting representing fifty-one percent of the milk produced and fifty-one percent of the milk dealers and producer-dealers 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.

(6) A referendum of affected producers, producer-dealers, and milk dealers shall be conducted only when a market area pooling arrangement is to be established. Only producers, milk dealers, and producer-dealers who are subject to the plan may vote on the termination of a pooling plan. [1993 c 345 § 8; 1992 c 58 § 4; 1991 c 239 § 8; 1971 ex.s. c 230 § 11.]

15.35.115 Referendum on establishing or discontinuing market area pooling arrangement—Producer-dealers. (1) Not less than sixty days before a referendum creating a market area and pooling plan with quotas is to be conducted under RCW 15.35.110, the director shall notify each producer-dealer regarding the referendum. Any producer-dealer may choose to vote on the referendum and each choosing to do so shall notify the director in writing of this choice not later than thirty days before the referendum is conducted. Such a producer-dealer and any person who becomes a producer-dealer or producer by acquiring the quota of such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the sales of milk in fluid form from the producer facilities during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated milk dealer under the terms of such an approved plan. RCW 15.35.310(1) does not apply to a producer-dealer who is subject to regulation under this subsection.

(2) If a person was not a producer-dealer at the time notice was provided to producer-dealers under subsection (1) of this section regarding a referendum on a proposed market area and pooling plan with quotas, the plan was approved by referendum, and the person subsequently became a producer-dealer (other than by virtue of the person's acquisition of the quota of a producer-dealer who is fully regulated under the plan), the person is subject to all of the terms of the plan for producers and milk dealers during the duration of the plan and RCW 15.35.310(1) does not apply to such a person with regard to that plan.

(3) This subsection applies: To a person who was a producer-dealer at the time the notice was provided to producer-dealers under subsection (1) of this section regard-

ing a referendum which was approved and who did not notify the director under subsection (1) of this section to vote in that referendum; and to a person who acquires the facility of such a person.

If such a person's sales of milk in fluid form subsequent to the adoption of the plan increases such that those sales in any year are more than fifty percent greater than the sales of milk in fluid form from the producer facilities during any of the previous five years, RCW 15.35.310(1) does not apply to that person with regard to that plan. Such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the producer-dealer's sales of milk in fluid form during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated dealer under the terms of such an approved plan.

If changes are made, on a market area-wide basis, to the quotas established under the plan, the director shall by rule adjust the fifty percent limitation provided by this section by an equivalent amount. [1993 c 345 § 9; 1992 c 58 § 2.]

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 milk dealers qualified to vote in any referendum establishing a market pool shall be all those milk dealers who operate a plant which is located within the state and who would receive milk priced under a market pool if established in such market area.

(3) The director is authorized during business hours to review the books and records of milk dealers to obtain a list of the producers qualified to sign petitions or to vote in referendums and to verify that such milk dealers are qualified to vote in a referendum. [1991 c 239 § 9; 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 classifying, pricing, and pooling of all milk used in each market area established under RCW 15.35.110.

(2) Thereafter the director may 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, or their cooperative associations, will receive the same prices 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. Such prices may reflect adjustments based on the value of component parts of each producer's milk. [1991 c 239 § 10; 1971 ex.s. c 230 § 14.]

15.35.150 Determination of quota. (1) Under a market pool and as used in this section, "quota" means a producer's or producer-dealer's portion of the total sales of milk in a market area in fluid form or, in the director's discretion, in other forms.

(2) The director may in each market area subject to a market plan establish each producer's and each producer-dealer's initial quota in the market area. Such initial quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. In making this determination, consideration shall be given to a history of the producer's production record. In no case shall a producer-dealer receive as a quota an amount which is less than his or her fluid milk sales for the reference period used by the director in determining quotas for other producers.

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 increase in available quota in a reasonable proportion. The director may establish a method to proportionately decrease quota allocations in the event decreases in milk usage occur.

All subsequent changes or new quotas issued shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. [1993 c 345 § 10; 1992 c 58 § 5; 1991 c 239 § 11; 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 34.05 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 producer shall become null and void as of any time the producer does not own the means of production to which the quotas pertain. Quotas shall in no event be considered as property and may be taken or abolished by the state without compensation. [1991 c 239 § 12; 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 the director 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.

The director may accept and use for the purposes of this section any audit made for or by a federal milk market order administrator which provides the information necessary for such purposes. [1991 c 239 § 13; 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 to be established by the director by rule.

(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 late fee of up to one-half of the license fee 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 the applicant has not acted as a milk dealer subsequent to the expiration of his or her prior license. [1991 c 239 § 14; 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 34.05 RCW concerning adjudicative proceedings, 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 23.86 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter, directly or through a marketing agent, 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. [1989 c 307 § 36; 1989 c 175 § 47; 1987 c 164 § 1; 1971 ex.s. c 230 § 24.]

Reviser's note: This section was amended by 1989 c 175 § 47 and by 1989 c 307 § 36, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Effective date—1989 c 175: See note following RCW 34.05.010.

15.35.250 Marketing assessment on producers—Additional assessment for milk testing—Penalty—Court action. (1) 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 or her agent subject to such marketing plan and shall be paid to the director for deposit into the agricultural local fund.

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 subsection and shall be determined according to the necessities required to carry out

the purpose and provisions of this chapter under any such marketing plan.

(2) In the event a producer's milk dealer does not provide milk testing in a state-certified laboratory, the director may levy an additional assessment on all such milk, not to exceed three cents per one hundred pounds of 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 the producer's agent subject to the marketing plan and shall be paid to the director for deposit into the agricultural local fund. Moneys from such assessments shall be used to provide testing of the milk in a state-certified laboratory.

The amount to be assessed and paid to the director under this subsection shall be determined by the director within the limits prescribed by this subsection.

(3) 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. [1993 c 345 § 11; 1991 c 239 § 15; 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 producer-dealers exempt. (1) Except as provided in RCW 15.35.115, the provisions of this chapter shall not apply to persons designated as producer-dealers, except that:

(a) The director may require pursuant to RCW 15.35.100 any information deemed necessary to verify a producer-dealer's status as a producer-dealer; and

(b) A producer-dealer shall comply with all requirements of this chapter applicable to milk dealers, except those which the director may deem unnecessary.

(2) The director shall upon request designate producer-dealers and adopt rules governing eligibility for designation of a producer-dealer and cancellation of such designation. To receive such designation, a producer-dealer shall, at a minimum:

(a) In its capacity as a handler, have and exercise complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its own milk production resources and facilities as designated in subsection (4)(a) of this section, the operation and management of which are under the complete and exclusive control of the producer-dealer in its capacity as a dairy farmer;

(b) Neither receive at its designated milk production resources and facilities nor receive, handle, process, or distribute at or through any of its milk handling, processing, or distributing resources and facilities, as designated in subsection (4)(b) of this section, milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) other milk dealers within the limitation specified in subsection (2)(e) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products;

(c) Neither be directly nor indirectly associated with the business control or management of, nor have a financial interest in, another dealer's operation; nor shall any other dealer be so associated with the producer-dealer's operation;

(d) Not allow milk from the designated milk production resources and facilities of the producer-dealer to be delivered in the name of another person as producer milk to another handler; and

(e) Not handle fluid milk products derived from sources other than the designated milk production facilities and resources, except for fluid milk product purchased from pool plants which do not exceed in the aggregate a daily average during the month of one hundred pounds.

(3) Designation of any person as a producer-dealer following a cancellation of its prior designation shall be preceded by performance in accordance with subsection (2) of this section for a period of one month.

(4) Designation of a person as a producer-dealer shall include the determination and designation of the milk production, handling, processing, and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(a) As milk production resources and facilities: All resources and facilities, milking herd, buildings housing such herd, and the land on which such buildings are located, used for the production of milk:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer;

(ii) In which the producer-dealer in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-dealer. However, for purposes of this item (4)(a)(iii) any such milk production resources and facilities which the producer-dealer proves to the satisfaction of the director do not constitute an actual or potential source of milk supply for the producer-dealer's operation as such shall not be considered a part of the producer-dealer's milk production resources and facilities; and

(b) As milk handling, processing, and distributing resources and facilities: All resources and facilities including store outlets used for handling, processing, and distributing any fluid milk product:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer; or

(ii) In which the producer-dealer in any way has an interest, including any contractual arrangement, or with respect to which the producer-dealer directly or indirectly exercises any degree of management or control.

(5) Designation as a producer-dealer shall be canceled automatically upon determination by the director that any of the requirements of subsection (2) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred. [1992 c 58 § 6; 1991 c 239 § 16; 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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15.36.501	Fines—Distribution—Remittance of district court fees, fines, penalties and forfeitures.
15.36.511	Unlawful interference with official.
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15.36.531	Declaration of police power.
15.36.541	Chapter cumulative.
15.36.551	Dairy inspection program—Assessment.
15.36.561	Dairy inspection program—Advisory committee.

15.36.002 Intent. This chapter is intended to enact state legislation that safeguards the public health and promotes public welfare by: (1) Protecting the consuming public from milk or milk products that are: (a) Unsafe; (b) produced under unsanitary conditions; (c) do not meet bacterial standards under the PMO; or (d) below the quality standards under Title 21 C.F.R. or administrative rules and orders adopted under this chapter; and (2) requiring licensing

of all aspects of the dairy production and processing industry. [1994 c 143 § 101.]

15.36.012 Definitions. For the purpose of this chapter:

"Adulterated milk" means milk that is deemed adulterated under appendix L of the PMO.

"Aseptic processing" means the process by which milk or milk products have been subjected to sufficient heat processing and packaged in a hermetically sealed container so as to meet the standards of the PMO.

"Colostrum milk" means milk produced within ten days before or until practically colostrum free after parturition.

"DMO" means supplement I, the recommended sanitation ordinance for grade A condensed and dry milk products and condensed and dry whey, to the PMO published by the United States public health service, food and drug administration.

"Dairy farm" means a place or premises where one or more cows, goats, or other mammals are kept, a part or all of the milk or milk products from which is sold or offered for sale to a milk processing plant, transfer station, or receiving station.

"Dairy technician" means any person 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.

"Department" means the state department of agriculture.

"Director" means the director of agriculture of the state of Washington or the director's duly authorized representative.

"Distributor" means a person other than a producer who offers for sale or sells to another, milk or milk products.

"Grade A milk processing plant" means any milk processing plant that meets all of the standards of the PMO to process grade A pasteurized milk or milk products.

"Grade A pasteurized milk" means grade A raw milk that has been pasteurized.

"Grade A raw milk" means raw milk produced upon dairy farms conforming with all of the items of sanitation contained in the PMO, in which the bacterial plate count does not exceed twenty thousand per milliliter and the coliform count does not exceed ten per milliliter as determined in accordance with RCW 15.36.201.

"Grade A raw milk for pasteurization" means raw milk produced upon dairy farms conforming with all of the same items of sanitation contained in the PMO of grade A raw milk, and the bacterial plate count, as delivered from the farm, does not exceed eighty thousand per milliliter as determined in accordance with RCW 15.36.201.

"Grade C milk" is milk that violates any of the requirements for grade A milk but that is not deemed to be adulterated.

"Homogenized" means milk or milk products which have been treated to ensure breakup of the fat globules to an extent consistent with the requirements outlined in the PMO.

"Milk" means the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows, goats, or other mammals.

"Milk hauler" means a person who transports milk or milk products in bulk to or from a milk processing plant, receiving station, or transfer station.

"Milk processing" means the handling, preparing, packaging, or processing of milk in any manner in preparation for sale as food, as defined in chapter 69.04 RCW. Milk processing does not include milking or producing milk on a dairy farm that is shipped to a milk processing plant for further processing.

"Milk processing plant" means a place, premises, or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, aseptically processed, bottled, or prepared for distribution, except an establishment that merely receives the processed milk products and serves them or sells them at retail.

"Milk products" means the product of a milk manufacturing process.

"Misbranded milk" means milk or milk products that carries a grade label unless such grade label has been awarded by the director and not revoked, or that fails to conform in any other respect with the statements on the label.

"Official brucellosis adult vaccinated cattle" means those cattle, officially vaccinated over the age of official calthood vaccinated cattle, that the director has determined have been commingled with, or kept in close proximity to, cattle identified as brucellosis reactors, and have been vaccinated against brucellosis in a manner and under the conditions prescribed by the director after a hearing and under rules adopted under chapter 34.05 RCW, the administrative procedure act.

"Official laboratory" means a biological, chemical, or physical laboratory that is under the direct supervision of the state or a local regulatory agency.

"Officially designated laboratory" means a commercial laboratory authorized to do official work by the department, or a milk industry laboratory officially designated by the department for the examination of grade A raw milk for pasteurization and commingled milk tank truck samples of raw milk for antibiotic residues and bacterial limits.

"PMO" means the grade "A" pasteurized milk ordinance published by the United States public health service, food and drug administration.

"Pasteurized" means the process of heating every particle of milk or milk product in properly designed and operated equipment to the temperature and time standards specified in the PMO.

"Person" means an individual, partnership, firm, corporation, company, trustee, or association.

"Producer" means a person or organization who operates a dairy farm and provides, sells, or offers milk for sale to a milk processing plant, receiving station, or transfer station.

"Receiving station" means a place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and prepared for further transporting.

"Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

"Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

"Ultrapasteurized" means the process by which milk or milk products have been thermally processed in accordance with the time and temperature standards of the PMO, so as to produce a product which has an extended shelf life under refrigerated conditions.

"Ungraded processing plant" means a milk processing plant that meets all of the standards of the PMO to produce milk products other than grade A milk or milk products.

"Wash station" means a place, facility, or establishment where milk tanker trucks are cleaned in accordance with the standards of the PMO.

All dairy products mentioned in this chapter mean those fit or used for human consumption. [1995 c 374 § 1; 1994 c 143 § 102; 1989 c 354 § 1; 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. Formerly RCW 15.32.010.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: "Sections 1 through 47, 50 through 53, and 59 through 68 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1995." [1995 c 374 § 81.]

Severability—1989 c 354: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 354 § 89.]

15.36.021 Milk and milk products—Rule-making authority—Imitation dairy products—Grade A and raw milk—Labels. The director of agriculture is authorized to:

(1) Adopt rules necessary to carry out the purposes of chapters 15.36 and 15.38 RCW, which includes rules governing the farm storage tank and bulk milk tanker requirements, however the rules may not restrict the display or promotion of products covered under this section.

(2) By rule, establish, amend, or both, 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 adopted by the federal food and drug administration. The director of agriculture, by rule, may likewise establish, amend, or both, 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 this chapter. 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. The term "nondairy" may be used as an informative statement.

(3) By rule adopt the PMO, DMO, and supplemental documents by reference to establish requirements for grade A pasteurized and grade A raw milk.

(4) Adopt rules establishing standards for grade A pasteurized and grade A raw milk that are more stringent than the PMO based upon current industry or public health information for the enforcement of this chapter whenever he or she determines that any such rules are necessary to carry out the purposes of this section and RCW 15.36.481. The adoption of rules under this chapter, or the holding of a hearing in regard to a license issued or that may be issued under this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act.

(5) By rule, certify an officially designated laboratory to analyze milk for standard of quality, adulteration, contamination, and unwholesomeness. [1996 c 188 § 3; 1994 c 143 § 103; 1989 c 354 § 13; 1969 ex.s. c 102 § 1. Formerly RCW 15.36.011.]

Severability—1989 c 354: See note following RCW 15.36.012.

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.]

15.36.031 License required. 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 license from the director. [1994 c 143 § 201; 1989 c 354 § 16; 1961 c 11 § 15.36.080. Prior: 1955 c 238 § 8; 1949 c 168 § 3; Rem. Supp. 1949 § 6266-32. Formerly RCW 15.36.080.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.36.041 Milk producer's license. Every milk producer must obtain a milk producer's license to operate as a milk producer as defined in this chapter. A milk producer's license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for the license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee. [1994 c 143 § 202.]

15.36.051 Milk processing plant license. A milk processing plant must obtain an annual milk processing plant license from the department, which shall expire on a date set

by rule by the director. A milk processing plant may choose to process (1) grade A milk and milk products, or (2) other milk products that are not classified grade A.

Only one license may be required to process milk; however, milk processing plants must obtain the necessary endorsements from the department in order to process products as defined for each type of milk or milk product processing. License fees shall be prorated if necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by a twenty-five dollar annual license fee. The applicant shall include on the application the full name of the applicant for the license and the location of the milk processing plant he or she intends to operate and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable rules adopted under this chapter by the department, the applicant shall be issued a license or a renewal of a license.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. If a license holder wishes to engage in processing a type of milk product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of milk product only after the amendment has been approved by the department.

A licensee under this section shall not be required to obtain a milk distributor's license under this chapter or a food processing plant license under chapter 69.07 RCW. [1994 c 143 § 203; 1991 c 109 § 2; 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. Formerly RCW 15.32.110.]

15.36.061 Milk distributor's license. Every distributor must have a milk distributor's license. The license shall not include retail stores or restaurants that purchase milk prepackaged or bottled elsewhere for sale at retail or establishments that sell milk only for consumption in such establishment. Such license, issued by the director on application and payment of a fee of ten dollars, shall contain the license number, and name, residence and place of business, if any, of the licensee. It shall be nontransferable, shall expire annually on a date set by rule by the director, and license fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1994 c 143 § 204; 1991 c 109 § 1; 1989 c 354 § 4; 1983 c 3 § 20; 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. Formerly RCW 15.32.100.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.36.071 Milk hauler's license—Endorsements. A milk hauler must obtain a milk hauler's license to conduct

the operation under this chapter. A milk hauler's license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for the license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee. A milk hauler's license shall also contain endorsements for individual milk transport vehicles. The license plate number and registration number for each milk transport vehicle shall be listed on the endorsement. [1995 c 374 § 2; 1994 c 143 § 205.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.36.081 Dairy technician's license—Application—Renewal. A dairy technician must obtain a dairy technician's license to conduct operations under this chapter. 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 or her qualifications for the functions for which application has been made.

Application for a license as a dairy technician shall be made upon forms provided by the director, and shall be filed with the department. The director may issue a temporary license to the applicant for such period as may be prescribed and stated in the license, not to exceed sixty days, but the license may not be renewed to extend the period beyond sixty days.

The initial application for a dairy technician's license must be accompanied by a license fee of ten dollars. If it is not necessary that an examination be given, the fee for renewal of the license is five dollars. For circumstance[s] that require an examination the renewal fee is ten dollars. All dairy technicians' licenses shall expire biennially on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1994 c 143 § 206; 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. Formerly RCW 15.32.580.]

15.36.091 Dairy technician's license—Records—Inspection of. Licensed dairy technicians shall personally take all samples, conduct all tests, and determine all weights and grades of milk and milk products 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 copy of every original report of each test, weight, or grade made by him or her for a period of two months after making the report. No unfair, fraudulent, or manipulated sample shall be taken or delivered for analysis. [1994 c 143 § 207; 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. Formerly RCW 15.32.590.]

Penalty for violation of this section: RCW 15.36.431.

15.36.101 Milk wash station license. A wash station operator must obtain a milk wash station license to conduct the operation under this chapter for all wash stations separate

from a milk processing plant. A milk wash station license is not transferable with respect to persons or locations or both. The license, issued by the director upon approval of an application for such license and compliance with the provisions of this chapter, shall contain the license number, name, residence, and place of business, if any, of the licensee. [1994 c 143 § 208.]

15.36.111 Inspection of dairy farms and milk processing plants. The director shall inspect all dairy farms and all milk processing plants prior to issuance of a license under this chapter and at a frequency determined by the director by rule: 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 grade requirement, he or she shall make a second inspection after a lapse of such time as he or she 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 degrading or summary suspension of the license in accordance with the requirements of chapter 34.05 RCW.

One copy of the inspection report detailing the grade requirement violations shall be posted by the director in a conspicuous place upon an inside wall of one of the dairy farm or milk processing 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 permit the director access to all parts of the establishment during the working hours of the producer or distributor, which shall at a minimum include the hours from 8 a.m. to 5 p.m., and every distributor shall furnish the director, upon his or her 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. [1996 c 189 § 1; 1994 c 143 § 209; 1961 c 11 § 15.36.100. Prior: 1949 c 168 § 5; Rem. Supp. 1949 § 6266-34. Formerly RCW 15.36.100.]

Effective date—1996 c 189: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 189 § 3.]

15.36.121 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 of one gallon or less 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 or milk consumed on the premises in serving sizes not to exceed two hundred thirty-six milliliters or one-half pint, 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 forty-five 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. [1995 c 225 § 2; 1994 c 143 § 210; 1961 c 11 § 15.36.490. Prior: 1949 c 168 § 10; Rem. Supp. 1949 § 6266-38. Formerly RCW 15.36.490.]

15.36.131 Sale of out-of-state grade A milk and milk products. Grade A 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 and the PMO: PROVIDED, That the director shall satisfy himself or herself that the authority having jurisdiction over the production and processing is properly enforcing such provisions. [1994 c 143 § 211; 1961 c 11 § 15.36.500. Prior: 1949 c 168 § 11; Rem. Supp. 1949 § 6266-39. Formerly RCW 15.36.500.]

15.36.141 Grading of milk and milk products. Grades of milk and milk products as defined in this chapter shall be based on the respectively applicable standards contained in this chapter, with the grading of milk products being identical with the grading of milk, except that bacterial standards are omitted in the case of cultured milk products. 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. [1994 c 143 § 510; 1984 c 226 § 3; 1981 c 297 § 2; 1961 c 11 § 15.36.120. Prior: 1955 c 238 § 12; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.120.]

Severability—1981 c 297: See note following RCW 15.36.201.

15.36.151 Sale of products from diseased animals—Colostrum—Exception. It is unlawful to sell, offer for sale, or deliver:

(1) Milk or products produced from milk from cows, goats, or other mammals affected with disease or of which

the owner thereof has refused official examination and tests for disease; or

(2) Colostrum milk, except that colostrum milk from cows that have been tested for brucellosis within sixty days of parturition may be made available to persons having multiple sclerosis, or other persons acting on their behalf, who, at the time of the initial sale, present a form, signed by a licensed physician, certifying that the intended user has multiple sclerosis and that the user releases the provider of the milk from liability resulting from the consumption of the milk. Colostrum milk provided under this section is exempt from meeting the standards for grade A raw milk required by this chapter.

(3) The department of agriculture shall adopt rules to carry out this section. The rules shall include but not be limited to establishing standards requiring hyper-immunization. [1994 c 143 § 303; 1981 c 321 § 1; 1961 c 11 § 15.32.160. Prior: 1929 c 213 § 9; 1919 c 192 § 49; RRS § 6211. Formerly RCW 15.32.160.]

15.36.161 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: PROVIDED, That herds that have been officially brucellosis

adult vaccinated shall be retested not less than sixty days nor more than one hundred fifty days after being so vaccinated and such herds shall be retested and released from quarantine at intervals and under conditions prescribed by the director. 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. [1982 c 131 § 2; 1961 c 11 § 15.36.150. Prior: 1955 c 238 § 15; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.150.]

15.36.171 Grades of milk and milk products that 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 grade A pasteurized milk, or grade A raw milk. The director may revoke the license of any milk distributor, milk processing plant, or producer whose product fails to qualify as grade A pasteurized or grade A raw, or in lieu thereof may degrade his or her product to grade C and permit its sale as other than fluid milk or grade A milk products during a period not exceeding thirty days. In the event of an emergency, the director may permit the sale of grade C milk for more than thirty days. [1995 c 374 § 3; 1994 c 143 § 301; 1989 c 354 § 22; 1961 c 11 § 15.36.470. Prior: 1949 c 168 § 8; Rem. Supp. 1949 § 6266-37. Formerly RCW 15.36.470.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012

Severability—1989 c 354: See note following RCW 15.36.012.

15.36.181 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, 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. [1994 c 143 § 302; 1961 c 11 § 15.36.070. Prior: 1949 c 168 § 2; Rem. Supp. 1949 § 6266-31. Formerly RCW 15.36.070.]

15.36.191 Milk analysis—Report of result. The department, after obtaining 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. [1994 c 143 § 304; 1989 c 354 § 11; 1961 c 11 § 15.32.530. Prior: 1907 c 234 § 12; RRS § 6278. Formerly RCW 15.32.530.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.36.201 Examination of milk and milk products. During any consecutive six months at least four samples of raw milk, raw milk for pasteurization, or both, from each dairy farm and raw milk for pasteurization, after receipt by the milk processing plant and prior to pasteurization, heat-treated milk products, and pasteurized milk and milk products from each grade A milk processing plant, shall be collected in at least four separate months and examined in a laboratory approved by the director: PROVIDED, That in the case of raw milk for pasteurization the director may accept the results of an officially designated laboratory. Samples of other milk products may be taken and examined in a laboratory approved by the director as often as he or she 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, coliform determinations, phosphatase tests and other laboratory tests shall conform to the requirements of the PMO. Examinations may include such other chemical and physical determinations as the director may deem necessary for the detection of adulteration or for purposes of compliance. 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 or her request, with the name of all distributors from whom their milk and milk products are obtained.

If two of the last four consecutive bacterial counts, somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the standard for milk or milk products established in this chapter and rules adopted under this chapter, the director shall send written notice thereof to the person concerned. This notice shall remain in effect so long as two of the last four consecutive

samples exceed the limit of the same standard. An additional sample shall be taken within twenty-one days of the sending of the notice, but not before the lapse of three days. The director shall degrade or summarily suspend the milk producer's license or milk processing plant license whenever the standard is again violated so that three of the last five consecutive samples exceed the limit of the same standard. A milk producer's license or milk processing plant license shall subsequently be reinstated in notice status upon receipt of sample results that are within the standard for which the suspension occurred.

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 milk processing plant can again be sold as pasteurized milk or milk products. [1994 c 143 § 401; 1994 c 46 § 11; 1989 c 354 § 17; 1981 c 297 § 1; 1961 c 11 § 15.36.110. Prior: 1955 c 238 § 10; 1949 c 168 § 6; Rem. Supp. 1949 § 6266-35. Formerly RCW 15.36.110.]

Reviser's note: This section was amended by 1994 c 46 § 11 and by 1994 c 143 § 401, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1994 c 46: See note following RCW 15.58.070.

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1981 c 297: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 297 § 43.]

15.36.211 Raw milk labeling. All bottles, cans, packages, and other containers, enclosing raw milk or any raw milk product defined in this chapter shall be plainly labeled or marked with (1) the word "raw" only if the contents are raw; and (2) 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.

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. [1994 c 143 § 402; 1961 c 11 § 15.36.090. Prior: 1955 c 238 § 9; 1949 c 168 § 4; Rem. Supp. 1949 § 6266-33. Formerly RCW 15.36.090.]

15.36.221 Grade A raw milk—Cooling. Milk and milk products for consumption in the raw state or for pasteurization shall be cooled within two hours of completion of milking to forty degrees Fahrenheit or less and maintained at that temperature until picked up, in accordance with RCW 15.36.201, so long as the blend temperature after the first and following milkings does not exceed fifty degrees Fahrenheit. [1995 c 374 § 4; 1984 c 226 § 5; 1961 c 11 § 15.36.260. Prior: 1955 c 238 § 37; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.260.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.36.231 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. Formerly RCW 15.36.265.]

15.36.241 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. Formerly RCW 15.36.420.]

15.36.251 Grade C milk production, rule adoption. The director shall adopt rules setting standards and requirements for production of grade C milk and milk products. [1994 c 143 § 403; 1989 c 354 § 19; 1961 c 11 § 15.36.300. Prior: 1955 c 238 § 42; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part. Formerly RCW 15.36.300.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.36.261 Butter or cheese—Pasteurization of milk or cream. 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. Formerly RCW 15.32.410.]

15.36.271 "Pasteurized"—Use of word 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 in its final form. [1989 c 354 § 7; 1961 c 11 § 15.32.420. Prior: 1919 c 192 § 71; RRS § 6233. Formerly RCW 15.32.420.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.36.281 Unlawful use of containers—Seizure authorized. (1) It shall be unlawful for a person other than the owner, to possess for sale or barter or to use a container that is used to distribute packaged milk or milk products and that bears the name or trademark of an owner that has been properly registered.

(2) A person receiving packaged dairy products in containers bearing the registered name or trademark of the owner shall return the containers to the owner.

(3) When such a container is in the possession of a person other than the owner, the director may seize and hold it until it is established to the director's satisfaction that such possession is lawful. The director may seize such containers and return them to the owner, in which case the owner shall pay the expenses thereof. Neither the director nor a person who returns such containers shall be liable for containers lost in transportation. [1994 c 143 § 508; 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. Formerly RCW 15.32.450.]

15.36.291 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. Formerly RCW 15.32.460.]

15.36.301 Dairy farm or milk processing plant personnel health. A dairy farm offering for sale milk for consumption as grade A raw milk and all milk processing plants must conform with the requirements for personnel health as contained in the PMO. [1994 c 143 § 404; 1989 c 354 § 23; 1961 c 11 § 15.36.520. Prior: 1949 c 168 § 13; Rem. Supp. 1949 § 6266-41. Formerly RCW 15.36.520.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.36.311 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. Formerly RCW 15.36.530.]

15.36.401 Licenses—Denial, suspension, revocation.

A license issued under this chapter may be denied or suspended by the director upon violation by the holder of any of the terms of this chapter, for interference with the director in the performance of his or her duties, or if the holder has exhibited in the discharge of his or her functions negligence, misconduct, or lack of qualification. A license may be revoked after an opportunity for a hearing by the director upon serious or repeated violations or after the license has been suspended for thirty continuous days without correction of the items causing the suspension. [1994 c 143 § 501.]

15.36.411 Licenses—Endorsements—Grounds for suspension, revocation. The director may, subsequent to a hearing on the license, suspend or revoke a license issued under this chapter if the director 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 adopted under this chapter, or a lawful order of the director.

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available if requested under the provisions of this chapter.

(3) Refused the department access to a portion or area of a facility regulated under this chapter, for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with the applicable provisions of chapter 69.04 RCW, Washington food, drug, and cosmetic act, or rules adopted under chapter 69.04 RCW.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 15.36.111, 15.36.201, or 15.36.421.

Whenever a milk transport vehicle is found in violation of this chapter or rules adopted under this chapter, the endorsement for that milk transport vehicle contained on a milk hauler's license shall be suspended or revoked. The suspension or revocation does not apply to any other milk transport vehicle operated by the milk hauler. [1995 c 374 § 5; 1994 c 143 § 502.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.36.421 Milk processing plant—License suspension. (1) If the director finds a milk processing plant operating under conditions that constitute an immediate danger to public health, safety, or welfare or if the licensee or an employee of the licensee actively prevents the director or the director's representative, during an on-site inspection, from determining whether such a conditions [condition] exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) If a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) If a license is summarily suspended, processing operations shall immediately cease. However, the director may reinstate the license if the condition that caused the suspension has been abated to the director's satisfaction. [1994 c 143 § 503.]

15.36.431 Dairy technician's license required for certain duties—Penalty. No person shall employ a tester, sampler, weigher, grader, or pasteurizer who is not licensed as a dairy technician.

A person who violates the provisions of this section may be fined not less than two hundred fifty nor more than one thousand dollars, and his or her license issued under this chapter revoked or suspended subject to a hearing as provided under chapter 34.05 RCW. [1995 c 374 § 6; 1994 c 143 § 504; 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. Formerly RCW 15.32.610.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.36.441 Examination of milk and milk products—Residue test results—Civil penalty. (1) If the results of an antibiotic, pesticide, or other drug residue test under RCW 15.36.201 are above the actionable level established in the PMO and determined using procedures set forth in the PMO, a person holding a milk producer's license is subject to a civil penalty. The penalty shall be in an amount equal to one-half the value of the sum of the volumes of milk equivalent produced under the license on the day prior to and the day of the adulteration. The value of the milk shall be computed by the weighted average price for the federal market order under which the milk is delivered.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.05 and 34.12 RCW. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, and, if so, shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter 34.05 RCW. Tests performed for antibiotic, pesticide, or other drug residues by an official laboratory or an officially designated laboratory of a milk sample drawn by a department official or a licensed dairy technician shall be admitted as prima facie evidence of the presence or absence of an antibiotic, pesticide, or other drug residue.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department. The penalty shall be deducted by the violator's marketing organization from the violator's final payment for the month following the issuance of the final order. The department shall promptly notify the violator's marketing organization of any penalties contained in the final order.

(4) All penalties received or recovered from violations of this section shall be remitted monthly by the violator's marketing organization to the Washington state dairy products commission and deposited in a revolving fund to be used solely for the purposes of education and research. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the antibiotic, pesticide, or other drug residue test requirements, an investigation shall be made to determine the cause of the residue which shall be corrected. Follow-up sampling and testing must be done in accordance with the requirements of the PMO. [1995 c 374 § 7; 1994 c 143 § 505; 1993 c 212 § 1. Prior: 1989 c 354 § 18; 1989 c 175 § 48; 1984 c 226 § 1. Formerly RCW 15.36.115.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1989 c 354: See note following RCW 15.36.012.

Effective date—1989 c 175: See note following RCW 34.05.010.

15.36.451 Regrading of milk or milk products—Reinstatement of permit. Any producer or distributor of milk or milk products the grade of which has been lowered by the director, or whose permit has been suspended may at any time make application for the regrading of his or her products or the reinstatement of his or her 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 15.36.201.

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 or she may deem necessary to assure himself or herself 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. [1996 c 189 § 2; 1994 c 143 § 506; 1961 c 11 § 15.36.480. Prior: 1949 c 168 § 9; Rem. Supp. 1949 § 6266-37a. Formerly RCW 15.36.480.]

Effective date—1996 c 189: See note following RCW 15.36.111.

15.36.461 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. Formerly RCW 15.32.550.]

15.36.471 Component parts of fluid dairy products—Violations of standards—Civil penalty. (1) The director of agriculture shall adopt rules imposing a civil penalty for violations of the standards for component parts of fluid dairy products which are established under this chapter or adopted pursuant to RCW 69.04.398. The penalty shall not exceed ten thousand dollars and shall be such as is necessary to achieve proper enforcement of the standards. The rules shall be adopted before January 1, 1987, and shall become effective on July 1, 1987.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely

manner, a hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.05 and 34.12 RCW. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, reduced, or not imposed and shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter 34.05 RCW. Tests performed for the component parts of milk products by a state laboratory of a milk sample collected by a department official shall be admitted as prima facie evidence of the amounts of milk components in the product.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department.

(4) All penalties received or recovered from violations of this section shall be remitted by the violator to the department and deposited in the revolving fund of the Washington state dairy products commission. One-half of the funds received shall be used for purposes of education with the remainder one-half to be used for dairy processing or marketing research, or both. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the standards for the composition of milk products, an investigation shall be made to determine the cause of the violation which shall be corrected. Additional samples shall be taken as soon as possible and tested by the department. [1994 c 143 § 511; 1993 c 212 § 3; 1989 c 175 § 49; 1986 c 203 § 19. Formerly RCW 15.36.595.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1986 c 203: See note following RCW 15.17.245.

15.36.481 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. Formerly RCW 15.36.600.]

15.36.491 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. Formerly RCW 15.32.710.]

15.36.501 Fines—Distribution—Remittance of district 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 district 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. [1987 c 202 § 173; 1969 ex.s. c 199 § 12; 1961 c 11 § 15.32.720. Prior: 1919 c 192 § 82; RRS § 6244. Formerly RCW 15.32.720.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.36.511 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. Formerly RCW 15.32.730.]

15.36.521 Transfer of duties to the department of health. The powers and duties of the department of social and health services and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 236. Formerly RCW 15.36.005.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

15.36.531 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. Formerly RCW 15.32.900.]

15.36.541 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. Formerly RCW 15.32.910.]

15.36.551 Dairy inspection program—Assessment. (Expires June 30, 2000.) There is levied on all milk processed in this state an assessment not to exceed fifty-four one-hundredths of one cent per hundredweight. The director shall determine, by rule, an assessment, that with contribution from the general fund, will support an inspection program to maintain compliance with the provisions of the pasteurized milk ordinance of the national conference on interstate milk shipment. All assessments shall be levied on the operator of the first milk plant receiving the milk for processing. This shall include milk plants that produce their

own milk for processing and milk plants that receive milk from other sources. All moneys collected under this section shall be paid to the director by the twentieth day of the succeeding month for the previous month's assessments. The director shall deposit the funds into the dairy inspection account hereby created within the agricultural local fund established in RCW 43.23.230. The funds shall be used only to provide inspection services to the dairy industry. If the operator of a milk plant fails to remit any assessments, that sum shall be a lien on any property owned by him or her, and shall be reported by the director and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes under chapters 84.60 and 84.64 RCW.

This section shall expire June 30, 2000. [1995 c 15 § 1; 1994 c 34 § 1; 1993 sp.s. c 19 § 1; 1992 c 160 § 1. Formerly RCW 15.36.105.]

Effective date—1995 c 15: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 12, 1995]." [1995 c 15 § 2.]

15.36.561 Dairy inspection program—Advisory committee. (1) There is created a dairy inspection program advisory committee. The committee shall consist of nine members. The committee shall be appointed by the director from names submitted by dairy producer organizations or from handlers of milk products. The committee shall consist of four members who are producers of milk or their representatives, and four members who are handlers or their representatives, and one member who must be a producer-handler.

(2) The purpose of this advisory committee is to assist the director by providing recommendations regarding the dairy inspection program, that are consistent with the pasteurized milk ordinance. The advisory committee shall (a) review and evaluate the program including the efficiency of the administration of the program, the adequacy of the level of inspection staff, the ratio of inspectors to number of dairy farm inspections per year, and the ratio of inspectors to management employees; and (b) consider alternatives to the state program, which may include privatization of various elements of the inspection program.

(3) The committee shall meet as necessary to complete its work. Meetings of the committee are subject to the open public meetings act. [1994 c 143 § 507; 1994 c 34 § 2; 1992 c 160 § 2. Formerly RCW 15.36.107.]

Chapter 15.37

MILK AND MILK PRODUCTS FOR ANIMAL FOOD

Sections

- 15.37.010 Definitions.
- 15.37.020 Enforcement of chapter—Rules, subject to administrative procedure act.
- 15.37.030 Minimum conditions for sale, etc.—When license required—Expiration date of license.
- 15.37.040 Application, issuance of license.
- 15.37.050 License fee on application.
- 15.37.060 Penalty for delinquency on renewal of license.
- 15.37.070 Denial, suspension, revocation of license.

- 15.37.080 Denial, suspension, revocation of license—Hearings subject to administrative procedure act.
- 15.37.090 Subpoenas—Witness fees.
- 15.37.100 Coloring of milk in containers, when required.
- 15.37.110 Labels on containers—Contents.
- 15.37.120 Entry on premises.
- 15.37.130 Injunctions authorized.
- 15.37.140 Chapter cumulative and nonexclusive.
- 15.37.150 Penalty.
- 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 34.05 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 require-

ments 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 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 34.05 RCW concerning adjudicative proceedings. [1989 c 175 § 50; 1961 c 285 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 nonexclusive 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 15.36.021.

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, 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;

(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;

(e) Any cheese product or cheese; or

(f) Any cream sauce added to processed vegetables.

(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. [1979 c 154 § 21; 1961 c 11 § 15.38.010. Prior: 1951 c 20 § 2.]

Severability—1979 c 154: See note following RCW 15.49.330.

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 15.36.481.

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—CONSUMER PROTECTION

(Formerly: 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

YELLOW MARGARINE— PROHIBITION REPEALED

(Formerly: 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, approved November 4, 1952).]

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, approved November 4, 1952).]

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.
- 15.44.027 Commission districts and boundaries.
- 15.44.030 Member qualifications.
- 15.44.032 Terms—Vacancies.
- 15.44.033 Nomination and election procedure.
- 15.44.035 Producer lists.
- 15.44.037 Reimbursement of election costs.
- 15.44.038 Quorum—Compensation—Travel expenses.
- 15.44.040 Copies of records as evidence.
- 15.44.050 Manager—Secretary-treasurer—Treasurer's bond.
- 15.44.060 Powers and duties.
- 15.44.070 Rules, regulations and orders, publication.
- 15.44.080 Assessments on milk and cream—Amounts—Increases—Producer referendum.
- 15.44.085 Assessments on class I or class II milk.
- 15.44.087 Class I and class II milk defined.
- 15.44.090 Collection of assessments—Lien.
- 15.44.100 Records of dealers, shippers—Preservation—Inspection.
- 15.44.110 Reports of dealers, shippers, to commission.
- 15.44.130 Research, advertising, educational campaign—Increase or decrease of assessments—Procedure.
- 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.

General obligation bonds: Chapter 43.991 RCW.

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 or 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 and sells it for human or animal food, or medicinal or industrial uses;

"Maximum authorized assessment rate" means the level of assessment most recently approved by a referendum of producers;

"Current level of assessment" means the level of assessment paid by the producer as set by the commission which cannot exceed the maximum authorized assessment rate. [1985 c 261 § 17; 1979 ex.s. c 238 § 1; 1961 c 11 § 15.44.010. Prior: 1939 c 219 § 2; RRS § 6266-2.]

Severability—1979 ex.s. c 238: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 238 § 27.]

15.44.020 Commission created—Composition.

There is hereby created a Washington state dairy products commission to be thus known and designated: PROVIDED, That the commission may take actions under the name, "the dairy farmers of Washington". The commission shall be composed of not more than ten members. There shall be one member from each district who shall be a practical producer of dairy products to be elected by such producers, one member shall be a dealer, and one member shall be a producer who also acts as a dealer, and such dealer and producer who acts as a dealer shall be appointed by the director of agriculture, and the director of agriculture shall be an ex officio member without vote. [1979 ex.s. c 238 § 2; 1975 1st ex.s. c 136 § 1; 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.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.027 Commission districts and boundaries.

The commission shall delete, combine, revise, amend, or modify in any manner commission districts and boundaries by regulation as required and in accordance with the intent and provisions of this section. Commission districts established by statute prior to September 8, 1975 shall remain in effect until superseded by such regulations.

The boundaries of the commission districts shall be maintained in a manner that assures each producer a representation in the commission which is reasonably equal with the representation afforded all other producers by their commission members.

The commission shall, when requested in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW as enacted or hereafter amended, or on its own initiative, hold hearings to determine if new boundaries for each commission district should be established in order to afford each producer a reasonably equal representation in the commission, and if the commission so finds it shall change the boundaries of said commission districts to carry out the proper reapportionment of producer representation on the commission: PROVIDED, That the requirement of this section for reasonable equal representation of each producer on the commission need not require an equality of representation when the commission districts east of the crest of the Cascade mountains are compared to the commission districts west of the crest of the Cascade mountains:

PROVIDED FURTHER, That the area east of the crest of the Cascade mountains shall comprise not less than two commission districts.

The commission may in carrying out this reapportionment directive reduce the number of districts presently provided by prior law, whenever it is in the best interest of the producers and if such change would maintain reasonable apportionment for each historical production or marketing area: PROVIDED, That each elected commission member whose district may be consolidated with another district shall be allowed to serve out his term of office.

If the commission fails to carry out its directive as set forth herein for equal representation of each producer on the commission the director of agriculture may upon request by ten producers institute a hearing to determine if there is reasonably equal representation for each producer on the commission. If the director of agriculture finds that such reasonably equal representation is lacking, he then shall realign the district boundaries in a manner which will provide proper representation on the commission for each producer. [1975 1st ex.s. c 136 § 7.]

15.44.030 Member qualifications. Each of the 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.

The dealer member shall be actively engaged as a dealer in dairy products or employed in a dealer capacity as an officer or employee at management level in a dairy products organization. [1975 1st ex.s. c 136 § 2; 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.

The term of office of the first dealer appointed by the director shall expire July 1, 1977, and the term of office of the first producer who also acts as a dealer appointed by the director shall expire on July 1, 1978. The term of office of each dealer and each producer who also acts as a dealer shall be three years or until such time as a successor is duly appointed. Any vacancy for a dealer or a producer who also

acts as a dealer shall be forthwith filled by the director. The director, in making any appointments set forth herein, may consider lists of nominees supplied him by dealers or producers also acting as dealers. [1975 1st ex.s. c 136 § 3; 1965 ex.s. c 44 § 5; 1961 c 11 § 15.44.032. Prior: 1959 c 163 § 5.]

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 or she 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.

If only one person is nominated for a position on the commission, the director shall determine whether the person possesses the qualifications required by statute for the position and, if the director determines that the person possesses such qualifications, the director shall declare that the person has been duly elected. [1995 c 374 § 59; 1967 c 240 § 30; 1965 ex.s. c 44 § 6.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

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—Travel 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. Each member shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses at the rates allowed by RCW 43.03.050 and 43.03.060. [1984 c 287 § 15; 1975-'76 2nd ex.s. c 34 § 15; 1975 1st ex.s. c 7 § 12; 1961 c 11 § 15.44.038. Prior: 1959 c 163 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

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 one hundred 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. [1979 ex.s. c 238 § 3; 1961 c 11 § 15.44.050. Prior: (i) 1939 c 219 § 5; RRS § 6266-5. (ii) 1939 c 219 § 6; RRS § 6266-6.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

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 designed to improve milk production, quality, transportation, processing, and distribu-

tion and 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. [1979 ex.s. c 238 § 4; 1961 c 11 § 15.44.060. Prior: 1959 c 163 § 13; 1939 c 219 § 8; RRS § 6266-8.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

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 pursuant to the provisions of RCW 34.05.380. [1975 1st ex.s. c 7 § 39; 1961 c 11 § 15.44.070. Prior: 1939 c 219 § 18; RRS § 6266-18.]

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 maximum authorized assessment rate 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 the maximum authorized assessment rate 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 the maximum authorized assessment rate 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. [1985 c 261 § 18; 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.]

15.44.085 Assessments on class I or class II milk.

There is hereby levied on every hundredweight of class I or class II milk, as defined in RCW 15.44.087, sold by a dealer, including any milk sold by a producer who acts as a dealer, an assessment of:

(1) Five-eighths of one cent per hundredweight. Such assessment shall be in addition to the producer assessment paid by any producer who also acts as a dealer.

(2) Any additional assessment, within the power and duty of the commission to levy, such that the total assessment shall not exceed one cent per hundredweight, as required to effectuate the purpose of this section.

Such assessment may be increased by approval of dealers and producers who also act as dealers, subject to the standards set forth in chapter 15.44 RCW for increasing or decreasing assessments. The funds derived from such assessment shall be used for educational programs in institutions of learning and the sum of such funds derived annually from said dealers and producers who act as dealers shall be matched by assessments derived from producers for the purpose of funding said educational purposes in institutions of learning by an amount not less than the moneys collected from dealers and producers who act as dealers. [1979 ex.s. c 238 § 5; 1975 1st ex.s. c 136 § 5.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.087 Class I and class II milk defined. For the purpose of RCW 15.44.085, class I and class II milk sold means milk from cows produced by a producer as defined in RCW 15.44.010 and utilized as follows:

(1) Class I milk shall be all skim milk and butterfat:

(a) Sold in the form of fluid milk product subject to the following limitations and exceptions:

(i) Any products fortified with added nonfat milk solids shall be class I in an amount equal only to the weight of an equal volume of like unmodified product of the same butterfat content.

(ii) Fluid milk products in concentrated form shall be class I in an amount equal to the skim milk and butterfat used to produce the quantity of such products sold.

(iii) Products classified as class II pursuant to subsection (2) of this section are excepted.

(b) Packaged fluid milk products in inventory at the end of the month.

(2) Class II milk shall be all skim milk and butterfat:

(a) Used to produce ice cream, ice cream mix, frozen desserts, aerated cream products, plastic cream, soured cream dressing, yogurt, eggnog, cottage cheese, pot cheese, bakers cheese, cream cheese, neufchatel cheese, or starter; or

(b) Any milk or milk product, sterilized and either (i) packaged in hermetically sealed metal, plastic, foil, paper, or glass containers and used to produce condensed milk and condensed skim milk, or (ii) in fluid milk products disposed of in bulk to commercial food processing establishments or producer milk sold to a commercial food processing establishment. [1979 ex.s. c 238 § 6; 1975 1st ex.s. c 136 § 6.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

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 or a producer who acts as a dealer fails to remit any assessments, 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 and with the same priority over other creditors as prescribed for the collection of delinquent taxes. [1979 ex.s. c 238 § 7; 1975 1st ex.s. c 136 § 4; 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.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

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.]

15.44.130 Research, advertising, educational campaign—Increase or decrease of assessments—Procedure. (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.

(3)(a) The commission may decrease or increase the current level of assessment provided for in RCW 15.44.080 following a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW: PROVIDED, That the current level of assessment established in this manner shall not exceed the maximum authorized assessment rate established by producers in the most recent referendum.

(b) Upon receipt of a petition bearing the names of twenty percent of the producers requesting a reduction in the current level of assessment, the commission shall hold a hearing in accordance with chapter 34.05 RCW to receive producer testimony. After considering the testimony of the producer, the commission may adjust the current level of assessment. [1985 c 261 § 19; 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.

Liens, crop: Chapter 60.11 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: 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: 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: See note following RCW 62A.4-406.

Chapter 15.49

SEEDS

(Formerly: Washington state seed act)

Sections

- 15.49.005 Purpose—Rules.
15.49.011 Definitions.
15.49.021 Standards and label requirements—Rules.
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15.49.480 Cooperation and agreements with other agencies.
15.49.900 Existing liabilities not affected.
15.49.920 Effective date—1969 c 63.
15.49.930 Continuation of rules adopted pursuant to repealed sections—Adoption, amendment or repeal.
15.49.940 Short title.
15.49.950 Severability—1969 c 63.

15.49.005 Purpose—Rules. The purpose of this chapter is to provide uniformity and consistency in the packaging of agricultural, vegetable, and flower seeds so as to facilitate the interstate movement of seed, to protect consumers, and to provide a dispute-resolution process. The department of agriculture is hereby authorized to adopt rules in accordance with chapter 34.05 RCW to implement this chapter. To the extent possible, the department shall seek to incorporate into the rules provisions from the recommended

uniform state seed law in order to attain consistency with other states. [1989 c 354 § 70.]

Effective date—1989 c 354 §§ 70-81 and 84-86: "Sections 70 through 81 and 84 through 86 of this act shall take effect January 1, 1990." [1989 c 354 § 88.]

Severability—1989 c 354: See note following RCW 15.36.012.

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

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

(2) "Agricultural seed" includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combinations of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

(3) "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

(4) "Bulk seed" means seed distributed in a nonpackage form.

(5) "Certifying agency" means (a) an agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or (b) an agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

(6) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

(7) "Dealer" means any person who distributes.

(8) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(9) "Director" means the director of the department of agriculture.

(10) "Distribute" means to import, consign, offer for sale, hold for sale, sell, barter, or otherwise supply seed in this state.

(11) "Flower seeds" includes seeds of herbaceous plants grown from their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

(12) 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.

(13) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(14) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(15) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(16) "Inert matter" means all matter not seed, that includes broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by rule.

(17) "Kind" means one or more related species or subspecies that singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

(18) "Label" includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by this chapter, and it may include any other information relating to the labeled seed.

(19) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling.

(20) "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 conditioner's or dealer's code.

(21) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(22) "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

(23) "Official sample" means any sample of seed taken and designated as official by the department.

(24) "Other crop seed" means seed of plants grown as crops, other than the kind or variety included in the pure seed, as determined by methods defined by rule.

(25) "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.

(26) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

(27) "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by one hundred. The result is expressed as a whole number.

(28) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

(29) "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.

(30) "Retail" means to distribute to the ultimate consumer.

(31) "Screenings" mean chaff, seed, weed seed, inert matter, and other materials removed from seed in cleaning or conditioning.

(32) "Seed labeling registrant" means a person who has obtained a permit to label seed for distribution in this state.

(33) "Seeds" mean agricultural or vegetable seeds or other seeds as determined by rules adopted by the department.

(34) "Stop sale, use, or removal order" means an administrative order restraining the sale, use, disposition, and movement of a specific amount of seed.

(35) "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

(36) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(37) "Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(38) "Vegetable seeds" includes the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

(39) "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.

(40) "Inoculant" means a commercial preparation containing nitrogen fixing bacteria applied to the seed.

(41) "Coated seed" means seed that has been treated and has received an application of inert material during the treatment process. [1989 c 354 § 73.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.021 Standards and label requirements—

Rules. (1) The department shall establish by rule standards and label requirements for the following seed types: Agricultural seed (including grass, lawn, and turf seed), flower seed, and vegetable seed.

(2) The standards and label requirements shall be divided into the following categories:

(a) Percentage of kind and variety of each seed component present; and

(b) Percentage of weed seed (restricted and common).

(3) The standards and label requirements developed by the department shall at a minimum include:

(a) Amount of inert material;

(b) Specifics and warning for treated seed;

(c) Specifics for coated seed;

(d) Specifics and duration for inoculated seed;

(e) Specifics for seed which is below standard;

(f) Specifics for seed contained in containers, mats, tapes, or other planting devices;

(g) Specifics for seed sold in bulk;

(h) Specifics for hybrid seed; and

(i) Specifics for seed mixtures. [1989 c 354 § 71.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.031 Labels—Required information. In addition to the requirements contained in RCW 15.49.021, each seed label shall contain the following:

(1) The name and address of the person who labeled the seed and who sells, offers, or exposes the seed for sale within the state;

(2) Lot number identification;

(3) Seed origin;

(4) Germination rate and date of germination test or the year for which the seed was packaged for sale. [1989 c 354 § 72.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.041 Violations—Civil penalty. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than two thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. [1989 c 354 § 74.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.051 Unlawful practices. (1) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seeds within this state unless the test to determine the percentage of germination is completed within a fifteen-month period prior to sale, provided that germination tests for seed packaged in hermetically sealed containers shall be completed within thirty-six months prior to sale. The department shall establish rules for allowing retesting.

(2) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state not labeled in accordance with this chapter or having false or misleading labeling or for which there has been false or misleading advertisement.

(3) It is unlawful to represent seed to be certified unless it has been determined by a seed-certifying agency that such seed conformed to standards of purity and identity or variety in compliance with the rules adopted under this chapter.

(4) It is unlawful to attach any tags of similar size and format to the official certification tag that could be mistaken for the official certification tag.

(5) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state labeled with a variety name but not certified by an official seed-certifying

agency when it is a variety for which a United States certification of plant variety protection under the plant variety protection act (7 U.S.C. Sec. 2321 et seq.) specifies sale only as a class of certified seed: PROVIDED, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(6) It is unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label required by this chapter or its implementing rules or to alter or substitute seed in a manner that may defeat the purpose of this chapter;

(b) To disseminate any false or misleading advertisements concerning seeds subject to this chapter in any manner or by any means;

(c) To hinder or obstruct in any way, any authorized person in the performance of his or her duties under this chapter;

(d) To fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order or tags attached thereto, except with express permission of the enforcing officer, and for the purpose specified thereby;

(e) To use the word "trace" as a substitute for any statement that is required; and

(f) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.

(7) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state that consists of or contains: (a) Prohibited noxious weed seeds; or (b) restricted noxious weed seeds in excess of the number declared on the label. [1989 c 354 § 75.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.061 Exceptions. (1) The provisions of RCW 15.49.011 through 15.49.051 do not apply:

(a) To seed or grain not intended for sowing purposes;

(b) To seed in storage by, or being transported or consigned to a conditioning establishment for conditioning if the invoice or labeling accompanying the shipment of such seed bears the statement "seeds for conditioning" and if any labeling or other representation that may be made with respect to the unconditioned seed is subject to this chapter;

(c) To any carrier with respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier if the carrier is not engaged in producing, conditioning, or marketing seeds subject to this chapter; or

(d) Seed stored or transported by the grower of the seed.

(2) No person may be subject to the penalties of this chapter for having sold or offered for sale seeds subject to this chapter that were incorrectly labeled or represented as to kind, species, variety, or type, which seeds cannot be identified by examination thereof, unless he or she has failed to obtain an invoice, genuine grower's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity to be that stated. A genuine grower's declaration of variety shall affirm that

the grower holds records of proof concerning parent seed, such as invoice and labels. [1989 c 354 § 76.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.071 Damages—Arbitration prerequisite to legal action. (1) When a buyer is damaged by the failure of any seed covered by this chapter to produce or perform as represented by the required label, by warranty, or as a result of negligence, the buyer, as a prerequisite to maintaining a legal action against the dealer of such seed, shall have first provided for the arbitration of the claim. Any statutory period of limitations with respect to such claim shall be tolled from the date arbitration proceedings are instituted until ten days after the date on which the arbitration award becomes final.

(2) Similarly, no such claim may be asserted as a counterclaim or defense in any action brought by a dealer against a buyer until the buyer has first provided for arbitration of the claim. Upon the buyer's filing of a written notice of intention to assert such a claim as a counterclaim or defense in the action accompanied by a copy of the buyer's complaint in arbitration filed as provided in this chapter, the action shall be stayed, and any applicable statute of limitations shall be tolled with respect to such claim from the date arbitration proceedings are instituted until ten days after the arbitration award becomes final.

(3) Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under RCW 15.49.011 through 15.49.101.

(4) If the parties agree to submit the claim to arbitration and to be bound by the arbitration award, then the arbitration shall be subject to chapter 7.04 RCW, and RCW 15.49.081 through 15.49.111 will not apply to the arbitration. If the parties do not so agree, then the buyer may provide for mandatory arbitration by the arbitration committee under RCW 15.49.081 through 15.49.111. An award rendered in such mandatory arbitration shall not be binding upon the parties and any trial on any claim so arbitrated shall be de novo.

(5) This section applies only to claims, or counterclaims, where the relief sought is, or includes, a monetary amount in excess of two thousand dollars. All claims for two thousand dollars or less shall be commenced in either district court or small claims court. [1989 c 354 § 77.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.081 Arbitration—Filing fee—Rules. The director shall adopt rules, in conformance with chapter 34.05 RCW, providing for mandatory arbitration under this chapter and governing the proceedings of the arbitration committee. The decisions and proceedings of the arbitration committee shall not be subject to chapter 34.05 RCW. The department shall establish by rule a filing fee to cover the administrative costs of processing a complaint and submitting it to the arbitration committee. [1989 c 354 § 78.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.091 Arbitration—Procedure. (1) To submit a claim to mandatory arbitration, the buyer shall make and file with the department a sworn complaint against the dealer alleging the damages sustained. The buyer shall send a copy of the complaint to the dealer by United States registered mail. The filing fee shall be submitted to the department with each complaint filed and may be recovered from the dealer or other seller upon recommendations of the arbitration committee.

(2) Within twenty days after receipt of a copy of the complaint, the dealer shall file with the department, by United States registered mail, the answer to the complaint. Failure of a dealer to file a timely answer to the complaint shall be so documented for the record.

(3) The director shall, upon receipt of the answer, refer the complaint and answer to the arbitration committee for investigation, findings, and recommendations.

(4) Any dealer may request an investigation by the arbitration committee for any dispute involving seed which may not otherwise be before the arbitration committee. [1989 c 354 § 79.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.101 Investigation of complaint by arbitration committee. (1) Upon referral of a complaint for investigation, the arbitration committee shall make a prompt and full investigation of the matters complained of and report its award to the director within sixty days of such referral or such later date as parties may determine or as may be required in subsection (3) of this section.

(2) The report of the arbitration committee shall include, in addition to its award, recommendations as to costs, if any.

(3) In the course of its investigation, the arbitration committee may examine the buyer and the dealer on all matters that the arbitration committee may consider relevant; may grow a representative sample of the seed referred to in the complaint if considered necessary; and may hold informal hearings at such time and place as the committee chairman may direct upon reasonable notice to all parties. If the committee decides to grow a representative sample of the seed, the sixty-day period identified in this section shall be extended an additional thirty days.

(4) After the committee has made its award, the director shall promptly transmit the report by certified mail to all parties. [1989 c 354 § 80.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

15.49.111 Arbitration committee—Creation—Generally. (1) The director shall create an arbitration committee composed of five members, including the director, or a department employee designated by the director, and four members appointed by the director. The director shall make appointments so that the committee is balanced and

does not favor the interests of either buyers or dealers. The director also shall appoint four alternates to the committee. In making appointments the director, to the extent practical, shall seek the recommendations of each of the following:

(a) The dean of the college of agriculture and home economics at Washington State University;

(b) The chief officer of an organization in this state representing the interests of seed dealers;

(c) The chief officer of an agriculture organization in this state as the director may determine to be appropriate; and

(d) The president of an agricultural organization in this state representing persons who purchase seed.

(2) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(3) The committee shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the committee and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the commission as the chairman may direct.

(4) The purpose of the committee is to conduct arbitration as provided in this chapter. The committee may be called into session by or at the direction of the director or upon direction of its chairman to consider matters referred to it by the director in accordance with this chapter.

(5) The members of the committee shall receive no compensation for performing their duties but shall be reimbursed for travel expenses; expense reimbursement shall be borne equally by the parties to the arbitration.

(6) For purposes of this chapter, a quorum of four members or their alternates is necessary to conduct an arbitration investigation or to make an award. If a quorum is present, a simple majority of members present shall be sufficient to make a decision. Any member disagreeing with the award may prepare a dissenting opinion and such opinion also will be included in the committee's report.

(7) The director shall make provisions for staff support, including legal advice, as the committee finds necessary. [1989 c 354 § 81.]

Effective date—1989 c 354 §§ 70-81 and 84-86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.36.012.

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 34.05 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, conditioners, 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. [1981 c 297 § 9; 1969 c 63 § 31.]

Severability—1981 c 297: See note following RCW 15.36.201.

15.49.330 Screenings—Removal required—Disposition. (1) All screenings, removed in the cleaning or conditioning of seeds, which contain prohibited or restricted noxious weed seeds shall be removed from the seed conditioning plant only under conditions that will prevent weed seeds from being dispersed into the environment.

(2) The director may by regulation adopt requirements for moving, conditioning, and/or disposing of screenings. [1981 c 297 § 11; 1979 c 154 § 1; 1969 c 63 § 33.]

Severability—1981 c 297: See note following RCW 15.36.201.

Severability—1979 c 154: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 154 § 27.]

15.49.350 Permit to condition certified seed. Upon application for a permit to condition certified seed, the department shall inspect the seed conditioning facilities of the applicant to determine that genetic purity and identity of seed conditioned can be maintained. Upon approval, the department shall issue a seed conditioning 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. [1981 c 297 § 13; 1969 c 63 § 35.]

Severability—1981 c 297: See note following RCW 15.36.201.

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, establish by rule special assessments as needed, and incur such expenses as may be necessary to carry out the provisions 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 34.05 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. [1981 c 297 § 14; 1969 c 63 § 37.]

Severability—1981 c 297: See note following RCW 15.36.201.

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 twenty-five dollars, shall be issued through the master license system, shall bear the date of issue, shall expire on the master license expiration date and shall be prominently displayed in each place of business.

(2) Persons custom conditioning 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 through the master license system 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. [1982 c 182 § 24; 1981 c 297 § 15; 1969 c 63 § 38.]

Severability—1982 c 182: See RCW 19.02.901.

Severability—1981 c 297: See note following RCW 15.36.201.

Master license system

existing licenses or permits registered under, when: RCW 19.02.810.
generally: RCW 15.49.035.
to include additional licenses: RCW 19.02.110.

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 the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 25; 1969 c 63 § 39.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.
expiration date: RCW 19.02.090.
system—Existing licenses or permits registered under, when: RCW 19.02.810.

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, conditioned, 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 condition or relabel it to bring it into compliance with this chapter. [1981 c 297 § 16; 1969 c 63 § 41.]

Severability—1981 c 297: See note following RCW 15.36.201.

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.]

15.49.460 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 Moneys, disposition—Fees, fines, penalties and forfeitures of district courts, remittance. All moneys collected under the provisions of this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. Any residual balance remaining in the seed fund on June 9, 1988, shall be transferred to that account within the agricultural local fund. All fees, fines, forfeitures and penalties collected or assessed by a district 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. [1988 c 254 § 2; 1987 c 202 § 176; 1975 1st ex.s. c 257 § 2; 1969 ex.s. c 199 § 13; 1969 c 63 § 47.]

Intent—1987 c 202: See note following RCW 2.04.190.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

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.]

15.49.920 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 34.05 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after July 1, 1969, shall be subject to the provisions of chapter 34.05 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 15.53 COMMERCIAL FEED

Sections

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

(1) "Brand name" means a word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) "Commercial feed" means all materials or combination of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such whole seeds or physically altered seeds are not chemically changed or not adulterated within the meaning of RCW 15.53.902, are exempt. The department by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed with other materials, and are not adulterated within the meaning of RCW 15.53.902.

(3) "Contract feeder" means a person who is an independent contractor and feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(4) "Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the instructions of the final purchaser.

(5) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(6) "Director" means the director of the department or a duly authorized representative.

(7) "Distribute" means to offer for sale, sell, exchange or barter, commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(8) "Distributor" means a person who distributes.

(9) "Drug" means an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than people and articles, other than feed intended to affect the structure or a function of the animal body.

(10) "Exempt buyer" means a licensee who has agreed to be responsible for reporting tonnage and paying inspection fees for all commercial feeds they distribute. An exempt buyer must apply for exempt buyer status with the department. The department shall maintain a list of all exempt buyers and make the list available on request.

(11) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(12) "Final purchaser" means a person who purchases commercial feed to feed to animals in his or her care.

(13) "Initial distributor" means a person who first distributes a commercial feed in or into this state.

(14) "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.

(15) "Labeling" means all labels and other written, printed, or graphic matter: (a) Upon a commercial feed or any of its containers or wrappers; or (b) accompanying such commercial feed.

(16) "Licensee" means a person who holds a commercial feed license as prescribed in this chapter.

(17) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(18) "Medicated feed" means a commercial feed containing a drug or other medication.

(19) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(20) "Official sample" means a sample of feed taken by the department, obtained and analyzed as provided in RCW 15.53.9024 (3), (5), or (6).

(21) "Percent" or "percentage" means percentage by weight.

(22) "Person" means an individual, firm, partnership, corporation, or association.

(23) "Pet" means a domesticated animal normally maintained in or near the household of the owner of the pet.

(24) "Pet food" means a commercial feed prepared and distributed for consumption by pets.

(25) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use.

(26) "Retail" means to distribute to the final purchaser.

(27) "Sell" or "sale" includes exchange.

(28) "Specialty pet" means a domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

(29) "Specialty pet food" means a commercial feed prepared and distributed for consumption by specialty pets.

(30) "Ton" means a net weight of two thousand pounds avoirdupois.

(31) "Quantity statement" means the net weight (mass), net volume (liquid or dry), or count. [1995 c 374 § 33; 1982 c 177 § 1; 1975 1st ex.s. c 257 § 3; 1965 ex.s. c 31 § 2. Prior acts on this subject: 1961 c 11 §§ 15.53.010 through 15.53.900; 1953 c 80 §§ 1-35.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9012 Administration and administrative rules.

(1) The department shall administer, enforce and carry out the provisions of this chapter and may adopt rules necessary to carry out its purpose. In adopting such rules, the director shall consider (a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in the official publication of that organization; and (b) any regulation adopted pursuant to the authority of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301, et seq.), if the department would have the authority under this chapter to adopt the regulations. The adoption of rules shall be subject to a public hearing and all other applicable provisions of chapter 34.05 RCW (Administrative Procedure Act).

(2) 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. [1995 c 374 § 34; 1965 ex.s. c 31 § 3.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.53.9013 Commercial feed license—Required—Exemptions—Application—Fees—Renewal—Denial or revocation for noncompliance—Violation—Penalty—Rules.

(1) Beginning January 1, 1996, a person who manufactures a commercial feed, is an initial distributor of a commercial feed, or whose name appears as the responsible party on a commercial feed label to be distributed in or into this state shall first obtain from the department a commercial feed license for each facility. Sale of food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants, bona fide experimental feed on which accurate records and experimental programs are maintained, and pet food and specialty pet food are exempt from the requirement of a commercial feed license. The sale of byproducts or products of sugar refineries are not exempt from the requirement of a commercial feed license.

(2) Application for a commercial feed license shall be made annually on forms provided by the department and shall be accompanied by a fee of fifty dollars, except that for the period beginning January 1, 1996, and ending June 30, 1996, the fee shall be twenty-five dollars. The commercial feed license shall expire on June 30th of each year.

(3) An application for license shall include the following:

- (a) The name and address of the applicant;
- (b) Other information required by the department by rule.

(4) After January 1, 1996, application for license renewal is due July 1st of each year. If an application for license renewal provided for in this section is not filed with the department prior to July 15th, a delinquency fee of fifty dollars shall be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. The assessment of the delinquency fee shall not prevent the department from taking other action as provided for in this chapter. The penalty does not apply if the applicant furnishes an affidavit that he or she has not distributed a commercial feed subsequent to the expiration of his or her prior license.

(5) The department may deny a license application if the applicant is not in compliance with this chapter or applicable rules, and may revoke a license if the licensee is not in compliance with this chapter or applicable rules. Prior to denial or revocation of a license, the department shall provide notice and an opportunity to correct deficiencies. If an applicant or licensee fails to correct the deficiency, the department shall deny or revoke the license. If aggrieved by the decision, the applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(6) Notwithstanding the payment of a delinquency fee, it is a violation to distribute a commercial feed by an unlicensed person, and nothing in this chapter shall prevent the department from imposing a penalty authorized by this chapter for the violation.

(7) The department may under conditions specified by rule, request copies of labels and labeling in order to determine compliance with the provisions of this chapter. [1995 c 374 § 35.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.53.9014 Registration of pet food and specialty pet food—Exemption—Application—Renewal—Fees—Refusal or cancellation for noncompliance—Violation—Penalty. (1) Each pet food and specialty pet food shall be registered with the department and such registration shall be renewed annually before such commercial feed may be distributed in this state.

(2) The application for registration of pet food and specialty pet food shall be on forms provided by the department and shall be accompanied by the fees in subsection (3) of this section. Registrations expire on June 30th of each year.

(3) Pet food and specialty pet food registration fees are as follows:

(a) Each pet food and specialty pet food distributed in packages of ten pounds or more shall be accompanied by a fee of eleven dollars, except that for the period beginning January 1, 1996, and ending June 30, 1996, the fee shall be five dollars and fifty cents. If such commercial feed is also distributed in packages of less than ten pounds it shall be registered under (b) of this subsection.

(b) Each pet food and specialty pet food distributed in packages of less than ten pounds shall be accompanied by a fee of forty-five dollars, except that for the period beginning January 1, 1996, and ending June 30, 1996, the fee shall be twenty-two dollars and fifty cents. No inspection fee may be collected on pet food and specialty pet food distributed in packages of less than ten pounds.

(4) The department may require that the application for registration of pet food and specialty pet food be accompanied by a label and/or other printed matter describing the product.

(5) A distributor shall not be required to register a pet food or specialty pet food that is already registered under the provisions of this chapter, as long as it is distributed with the original label.

(6) Changes in the guarantee of either chemical or ingredient composition of a pet food or specialty pet food registered under the provisions of this chapter may be permitted if 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 it was designed.

(7) The department is authorized to refuse registration of any application not in compliance with the provisions of this chapter and any rule adopted under this chapter and to cancel any registration subsequently found to be not in compliance with any provisions of this chapter and any rule adopted under this chapter. Prior to refusal or cancellation of a registration, the applicant or registrant of an existing registered pet food or specialty pet food shall be notified of

the reasons and given an opportunity to amend the application to comply. If the applicant does not make the necessary corrections, the department shall refuse to register the feed. The applicant or registrant of an existing registered pet food or specialty pet food may request a hearing as provided for in chapter 34.05 RCW.

(8) After January 1, 1996, application for renewal of registration is due July 1st of each year. If an application for renewal of the registration provided for in this section is not filed prior to July 15th of any one year, a penalty of ten dollars per product shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration may be issued, unless the applicant furnishes an affidavit that he has not distributed this feed subsequent to the expiration of his or her prior registration.

(9) It is a violation of this chapter to distribute an unregistered pet food or specialty pet food. Payment of a delinquency fee shall not prevent the department from imposing a penalty authorized by this chapter for the violation. [1995 c 374 § 36; 1993 sp.s. c 19 § 2; 1982 c 177 § 2; 1975 1st ex.s. c 257 § 4; 1965 ex.s. c 31 § 4.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9016 Labeling—Required information—Recordkeeping—Rules. (1) Any commercial feed, except a customer-formula feed, distributed in this state shall be accompanied by a legible label bearing the following information:

(a) The product name and the brand name, if any, under which the commercial feed is distributed.

(b) The guaranteed analysis stated in such terms as the department by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.

(c) 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.

(d) The name and principal mailing address of the person responsible for distributing the commercial feed.

(e) Adequate directions for use for all commercial feeds containing drugs and for all such other commercial feeds as the department may require by rule as necessary for their safe and effective use.

(f) Precautionary statements as the department by rule determines are necessary for the safe and effective use of the commercial feed.

(g) The net weight as required under chapter 19.94 RCW.

(2) When a commercial feed, except a customer-formula 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, except a customer-formula 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 shipping document. The shipping document, 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 manufacturer;
- (b) Name and address of the purchaser;
- (c) Date of delivery;

(d) Product name and the net weight as required under chapter 19.94 RCW;

(e) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the department may require by rule as necessary for their safe and effective use;

(f) The directions for use and precautionary statements as required by subsection (1) (e) and (f) of this section; and

(g) If a drug containing product is used:

(i) The purpose of the medication (claim statement);

(ii) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules established by the department.

(4) The product name and quantity statement of each commercial feed and each other ingredient used in the customer formula feed must be on file at the plant producing the product. These records must be kept on file for one year after the last sale. This information shall be made available to the purchaser, the dealer making the sale, and the department on request. [1995 c 374 § 37; 1965 ex.s. c 31 § 5.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.53.9018 Inspection fees—Reports—Confidentiality, exception. (1) Except as provided in subsection (4) of this section, each initial distributor of a commercial feed in this state shall pay to the department an inspection fee on all commercial feed sold by such person during the year. The fee shall be not less than four cents nor more than twelve cents per ton as prescribed by the director by rule: **PROVIDED**, That such fees shall be used for routine enforcement and administration of this chapter and rules adopted under this chapter.

(2) An inspection fee is not required for: (a) Commercial feed distributed by a person having proof that inspection fees have been paid by his or her supplier (manufacturer); (b) commercial feed in packages weighing less than ten pounds; (c) commercial feed for shipment to points outside this state; (d) food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants; and (e) bona fide experimental feeds on which accurate records and experimental programs are maintained.

(3) Tonnage will be reported and inspection fees will be paid on (a) byproducts or products of sugar refineries; (b) materials used in the preparation of pet foods and specialty pet food.

(4) When more than one distributor is involved in the distribution of a commercial feed, the initial distributor is responsible for reporting the tonnage and paying the inspection fee, unless this sale or transaction is made to an exempt buyer.

(5) Each person made responsible by this chapter for the payment of inspection fees for commercial feed sold in this state shall file a report with the department on January 1st and July 1st of each year showing the number of tons of such commercial feed sold during the six calendar months immediately preceding the date the report is due. 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. Upon permission of the department, an annual statement under oath may be filed by any person distributing within the state less than one hundred tons for each six-month period during any year, and upon filing such statement such person shall pay the inspection fee at the rate provided for in subsection (1) of this section. The minimum inspection fee shall be twelve dollars and fifty cents for each six-month reporting period or twenty-five dollars if reporting annually.

(6) For the purpose of determining accurate tonnage of commercial feed distributed in this state or to identify or verify semiannual tonnage reports, the department may require each registrant or licensee, or both, to maintain records or file additional reports.

(7) The department may examine at reasonable times the records maintained under this section. Records shall be maintained in usable condition by the registrant or licensee for a period of two years unless by rule this retention period is extended.

(8) The registrant or licensee shall maintain records required under this section and submit these records to the department upon request.

(9) Any person responsible for reporting tonnage or paying inspection fees who fails to do so before the thirty-first day following the last day of each reporting period, shall pay a penalty equal to fifteen percent of the inspection fee due or fifty dollars, whichever is greater. The penalty, together with any delinquent inspection fee is due before the forty-first day following the last day of each reporting period. The department may cancel registration of a registrant or may revoke a license of a licensee who fails to pay the penalty and delinquent inspection fees within that time period. The applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(10) The report required by subsection (5) of this section shall not be a public record, and it is 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 if 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.

(11) Any commercial feed purchased by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use is subject to all the provisions of this chapter, including inspection fees. [1995 c 374 § 38; 1982 c 177 § 3; 1981 c 297 § 17; 1979 c 91 § 1; 1975 1st ex.s. c 257 § 5; 1967 c 240 § 32; 1965 ex.s. c 31 § 6.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Effective date—1981 c 297 § 17: "Section 17 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1981." [1981 c 297 § 44.]

Severability—1981 c 297: See note following RCW 15.36.201.

Effective date—1979 c 91: "This act shall take effect on January 1, 1980." [1979 c 91 § 2.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

Severability—1967 c 240: See note following RCW 43.23.010.

15.53.902 Adulteration—Definition—Unlawful to distribute. It is unlawful for any person to distribute an adulterated feed. A commercial feed is deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal food, drug, and cosmetic act (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a food additive); or

(3) If it is, or it bears, or contains any food additive which is unsafe within the meaning of section 409 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 348); or

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act: PROVIDED, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act; or

(5) If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal food, drug, and cosmetic act; or

(6) If it is, or it bears or contains any new animal drug that is unsafe within the meaning of section 512 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 360b); or

(7) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor; or

(8) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

(9) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess. In adopting such rules, the department shall adopt the current good manufacturing practice regulations for type A medicated articles and type B and type C medicated feeds established under authority of the federal food, drug, and cosmetic act, unless the department determines that they are not appropriate to the conditions that exist in this state; or

(10) If it contains viable, prohibited (primary) noxious weed seeds in excess of one per pound, or if it contains viable, restricted (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 15.49 RCW and rules adopted thereunder. [1995 c 374 § 39; 1982 c 177 § 4; 1979 c 154 § 2; 1965 ex.s. c 31 § 7.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1979 c 154: See note following RCW 15.49.330.

15.53.9022 Misbranding—Definition—Unlawful to distribute. 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 commercial feed;

(3) If it is not labeled as required in RCW 15.53.9016 and in rules prescribed under this chapter;

(4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed or feed ingredient, unless such commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rule of the department. In the adopting of such rules 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. [1995 c 374 § 40; 1965 ex.s. c 31 § 8.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.53.9024 Inspections—Verification of records and procedures—Official samples—Warrants authorized. (1) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether an operation is subject to such provisions, inspectors duly designated by the director, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized (a) to enter, during normal business hours, a factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter a vehicle being used to transport or hold such feeds; and (b) to inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the current good manufacturing practice regulations established under RCW 15.53.902(9) and rules adopted under good manufacturing practices for feeds to include nonmedicated feeds.

(2) A separate notice shall be given for each such inspection, but a notice is not required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the inspector or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge, a receipt describing the samples obtained.

(4) If the owner of a factory, warehouse, or establishment described in subsection (1) of this section, or his or her agent, refuses to admit the director or his or her agent to inspect in accordance with subsections (1) and (2) of this section, the director or his or her agent is authorized to obtain from any court of competent jurisdiction a warrant directing such owner or his or her agent to submit the premises described in the warrant to inspection.

(5) For the enforcement of this chapter, the director or his or her duly assigned agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser, if known. If the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty days following the receipt of the analysis, the department shall furnish to the registrant or licensee a portion of the sample concerned. If referee analysis is requested, a portion of the official sample shall be furnished by the

department and shall be sent directly to an independent lab agreed to by all parties.

(8) 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(20) and obtained and analyzed as provided for in this section.

(9) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [1995 c 374 § 41; 1965 ex.s. c 31 § 9.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Prosecutions, official analysis as evidence: RCW 15.53.904.

15.53.9038 Department's remedies for noncompliance—"Withdrawal from distribution" order—Condemnation—Seizure. (1) When the department has reasonable cause to believe that any lot of commercial feed is adulterated or misbranded or is being distributed in violation of this chapter or any rules hereunder it may issue and enforce a written or printed "withdrawal from distribution" order, or "stop sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department. The department shall release the lot of commercial feed so withdrawn when the provisions and rules have been complied with. If compliance is not obtained within thirty days, parties may agree to an alternative disposition in writing or the department may institute condemnation proceedings in a court of competent jurisdiction.

(2) Any lot of commercial feed not in compliance with the provisions and rules is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial feed is located. If the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. The court shall first give the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter. [1995 c 374 § 42; 1982 c 177 § 5; 1975 1st ex.s. c 257 § 7; 1965 ex.s. c 31 § 16.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

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 offi-

cial 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 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. [1995 c 374 § 43; 1965 ex.s. c 31 § 18.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.53.9044 Disposition of moneys. All moneys collected under this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. Any residual balance remaining in the commercial feed fund on June 9, 1988, shall be transferred to the account within the agricultural local fund. [1988 c 254 § 5; 1975 1st ex.s. c 257 § 8; 1965 ex.s. c 31 § 19.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

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.]

15.53.9053 Continuation of prior licenses and registrations. All licenses and registrations in effect on July 1, 1995, shall continue in full force and effect until their regular expiration date, December 31, 1995. No registration or license that has already been paid under the requirements of prior law shall be refunded. [1995 c 374 § 44; 1975 1st ex.s. c 257 § 12.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Effective date—1975 1st ex.s. c 257: "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 on July 1, 1975." [1975 1st ex.s. c 257 § 13.]

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, MINERALS, AND LIMES

Sections

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- 15.54.820 Department of ecology—Waste-derived or micronutrient fertilizer—Standards—Written decision—Appeal of decision.
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 - 15.54.960 Severability—1967 ex.s. c 22.
- Crop liens: Chapter 60.11 RCW.*

15.54.265 Intent—1998 c 36. (1) The legislature intends to strengthen the state’s fertilizer adulteration laws to protect human health and the environment by:

- (a) Ensuring that all fertilizers meet standards for allowable metals;
- (b) Allowing fertilizer purchasers and users to know about the contents of fertilizer products; and
- (c) Clarifying the department of ecology’s oversight authority over waste-derived fertilizers.

(2) The legislature intends to provide better information to the public on fertilizers, soils, and potential health effects by authorizing additional studies on plant uptake of metals and levels of dioxins in soils and products. [1998 c 36 § 1.]

Short title—1998 c 36: "This act may be known and cited as the fertilizer regulation act." [1998 c 36 § 24.]

15.54.270 Definitions. Terms used in this chapter have the meaning given to them in this chapter unless the context clearly indicates otherwise.

(1) "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers.

(2) "Bulk fertilizer" means commercial fertilizer distributed in a nonpackaged form such as, but not limited to, tote bags, tote tanks, bins, tanks, trailers, spreader trucks, and railcars.

(3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

(4) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It does not include unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the department by rule.

(5) "Composting" means the controlled aerobic degradation of organic waste materials. Natural decay of organic waste under uncontrolled conditions is not composting.

(6) "Customer-formula fertilizer" means a mixture of commercial fertilizer or materials of which each batch is mixed according to the specifications of the final purchaser.

(7) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(8) "Director" means the director of the department of agriculture.

(9) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, exchange, or otherwise supply commercial fertilizer in this state.

(10) "Distributor" means a person who distributes.

(11) "Fertilizer material" means a commercial fertilizer that either:

(a) Contains important quantities of no more than one of the primary plant nutrients: Nitrogen, phosphate, and potash;

(b) Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

(c) Is derived from a plant or animal residue or byproduct or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(12) "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 rule adopted by the department. Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(13) "Guaranteed analysis."

(a) Until the director prescribes an alternative form of "guaranteed analysis" by rule the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N)	.....	percent
Available phosphoric acid (P ₂ O ₅)	....	percent
Soluble potash (K ₂ O)	.....	percent

The percentage shall be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(b) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as allowed or required by rule of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(e) 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.

(14) "Imported fertilizer" means any fertilizer distributed into Washington from any other state, province, or country.

(15) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(16) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a commercial fertilizer, or

advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer.

(17) "Licensee" means the person who receives a license to distribute a commercial fertilizer under the provisions of this chapter.

(18) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium or magnesium carbonate, hydroxide, or oxide, singly or combined.

(19) "Manipulation" means processed or treated in any manner, including drying to a moisture content less than thirty percent.

(20) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

(21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron; manganese; molybdenum; sodium; and zinc.

(22) "Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorus, potash, calcium, magnesium, or sulfur.

(23) "Official sample" means a sample of commercial fertilizer taken by the department and designated as "official" by the department.

(24) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids.

(25) "Packaged fertilizer" means commercial fertilizers, either agricultural or specialty, distributed in nonbulk form.

(26) "Person" means an individual, firm, brokerage, partnership, corporation, company, society, or association.

(27) "Percent" or "percentage" means the percentage by weight.

(28) "Produce" means to compound or fabricate a commercial fertilizer through a physical or chemical process, or through mining. "Produce" does not include mixing, blending, or repackaging commercial fertilizer products.

(29) "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

(30) "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.

(31) "Ton" means the net weight of two thousand pounds avoirdupois.

(32) "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis.

(33) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.

(34) "Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste

as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW. [1998 c 36 § 2; 1997 c 427 § 1; 1993 c 183 § 1; 1987 c 45 § 1; 1967 ex.s. c 22 § 1.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—1987 c 45: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1987 c 45 § 32.]

Severability—1987 c 45: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 45 § 33.]

Effective date—1967 ex.s. c 22: See RCW 15.54.930.

15.54.275 Bulk fertilizer distribution license. (1) No person may distribute a bulk fertilizer in this state until a license to distribute has been obtained by that person. An annual license is required for each out-of-state or in-state location that distributes bulk fertilizer in Washington state. An application for each location shall be filed on forms provided by the master license system and shall be accompanied by an annual fee of twenty-five dollars per location. The license shall expire on the master license expiration date.

(2) An application for license shall include the following:

- (a) The name and address of licensee.
- (b) Any other information required by the department by rule.

(3) The name and address shown on the license shall be shown on all labels, pertinent invoices, and storage facilities for fertilizer distributed by the licensee in this state.

(4) If an application for license renewal provided for in this section is not filed prior to the master license expiration date, a delinquency 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. The assessment of this delinquency fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior license. [1998 c 36 § 3; 1993 c 183 § 2.]

Short title—1998 c 36: See note following RCW 15.54.265.

15.54.325 Commercial fertilizer registration—Required for distribution. (1) No person may distribute in this state a commercial fertilizer until it has been registered with the department by the producer, importer, or packager of that product. A bulk fertilizer does not require registration if all commercial fertilizer products contained in the final product are registered.

(2) An application for registration shall be made on a form furnished by the department and shall be accompanied by a fee of twenty-five dollars for each product. Labels for each product shall accompany the application. All companies planning to mix customer-formula fertilizers shall include the statement "customer-formula grade mixes" under

the column headed "product name" on the product registration application form. All customer-formula fertilizers sold under one brand name shall be considered one product.

(3) An application for registration shall include the following:

- (a) The product name;
- (b) The brand and grade;
- (c) The guaranteed analysis;
- (d) Name, address, and phone number of the registrant;
- (e) Labels for each product being registered;
- (f) Identification of those products that are (i) waste-derived fertilizers, (ii) micronutrient fertilizers, or (iii) fertilizer materials containing phosphate;

(g) Identification of the fertilizer components in the commercial fertilizer product and verification that all the components are registered. If any of the components are not registered, then the application must include the concentration of each metal in each fertilizer component, for which standards are established under RCW 15.54.800;

(h) Waste-derived fertilizers and micronutrient fertilizers shall include at a minimum, information to ensure the product complies with chapter 70.105 RCW and the resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq.; and

(i) Any other information required by the department by rule.

(4) If an application for renewal of the product registration provided for in this section is not filed prior to July 1st of any one year, a penalty of ten dollars per product shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration shall be issued. The assessment of this late collection fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior registration. [1998 c 36 § 4; 1993 c 183 § 3.]

Short title—1998 c 36: See note following RCW 15.54.265.

15.54.330 Commercial fertilizer registration—Application review—Labels and guarantees. (1) The department shall examine the commercial fertilizer product 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 commercial fertilizer products shall be registered by the department and a certificate of registration shall be issued to the applicant. All registrations expire June 30th of each year.

(2) In reviewing the commercial fertilizer product registration application, the department may consider experimental data, manufacturers' evaluations, data from agricultural experiment stations, product review evaluations, or other authoritative sources to substantiate labeling claims. The data shall be from statistically designed and analyzed trials representative of the soil, crops, and climatic conditions found in the northwestern area of the United States.

(3) In determining whether approval of a labeling statement or guarantee of an ingredient is appropriate, the department may require the submission of a written statement describing the methodology of laboratory analysis

utilized, the source of the ingredient material, and any reference material relied upon to support the label statement or guarantee of ingredient.

(4) Before registering a waste-derived fertilizer or micronutrient fertilizer, the department shall obtain written approval from the department of ecology as provided in *RCW 15.54.800. Once a waste-derived fertilizer or micronutrient fertilizer has been approved by the department of ecology, its subsequent use in another product during that registration cycle shall not require department of ecology review. This subsection shall apply to new and renewal registration applications for periods beginning July 1, 1999, and thereafter. [1998 c 36 § 5; 1993 c 183 § 4; 1967 ex.s. c 22 § 21.]

***Reviser's note:** The reference to RCW 15.54.800 appears to be erroneous. Reference to RCW 15.54.820 was apparently intended.

Short title—1998 c 36: See note following RCW 15.54.265.

15.54.340 Labeling requirements. (1) Any commercial fertilizer distributed in this state shall have placed on or affixed to the package a label setting forth in clearly legible and conspicuous form the following information:

- (a) The net weight;
- (b) The product name, brand, and grade. The grade is not required if no primary nutrients are claimed;
- (c) The guaranteed analysis;
- (d) The name and address of the registrant or licensee.

The name and address of the manufacturer, if different from the registrant or licensee, may also be stated;

(e) Any information required under WAC 296-62-054;

(f) At a minimum the following labeling statement: "This product has been registered with the Washington State Department of Agriculture. When applied as directed, this fertilizer meets the Washington standards for arsenic, cadmium, cobalt, mercury, molybdenum, lead, nickel, selenium, and zinc. You have the right to receive specific information about Washington standards from the distributor of this product.";

(g) After July 1, 1999, the label must also state: "Information received by the Washington State Department of Agriculture regarding the components in this product is available on the internet at <http://www.wa.gov/agr/>."; and

(h) Other information as required by the department by rule.

(2) If a commercial fertilizer is distributed in bulk, a written or printed statement of the information required by subsection (1) of this section 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 or licensee for a period of twelve 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 licensee, or manufacturer, or both; and the name and address of the purchaser.

(4) Any person who distributes a commercial fertilizer in this state shall make available to the purchaser on request, a copy of standards for metals established in RCW 15.54.800. [1998 c 36 § 6; 1993 c 183 § 5; 1987 c 45 § 12; 1967 ex.s. c 22 § 22.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.350 Inspection fees. (1) There shall be paid to the department for all commercial fertilizers distributed in this state to nonregistrants or nonlicensees an inspection fee of fifteen cents per ton of lime and thirty cents per ton of all other commercial fertilizer distributed during the year beginning July 1st and ending June 30th.

(2) Distribution 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 or licensee who distributes to a nonregistrant or nonlicensee is responsible for paying the inspection fee, unless the payment of fees has been made by a prior distributor of the fertilizer. [1993 c 183 § 6; 1987 c 45 § 13; 1981 c 297 § 18; 1975 1st ex.s. c 257 § 9; 1967 ex.s. c 22 § 23.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

Severability—1981 c 297: See note following RCW 15.36.201.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.54.362 Reports—Inspection fees—Confidentiality, exception. (1) Every registrant or licensee who distributes commercial fertilizer in this state shall file a semiannual report on forms provided by the department setting forth the number of net tons of each commercial fertilizer so distributed in this state. The reports will cover the following periods: January 1 through June 30 and July 1 through December 31 of each year. Upon permission of the department, an annual statement under oath may be filed for the annual reporting period of July 1 through June 30 of any year by any person distributing within the state less than one hundred tons for each six-month period during any calendar year, and upon filing such statement, such person shall pay the inspection fee required under RCW 15.54.350. The department may accept sales records or other records accurately reflecting the tonnage sold and verifying such reports.

(2) Each person responsible for the payment of inspection fees for commercial fertilizer distributed in this state shall include the inspection fees with the report on the same dates and for the same reporting periods mentioned in subsection (1) of this section. If in one year a registrant or licensee distributes less than eighty-three tons of commercial fertilizer or less than one hundred sixty-seven tons of commercial lime or equivalent combination of the two, the registrant or licensee shall pay the minimum inspection fee. The minimum inspection fee shall be twenty-five dollars per year.

(3) The department may, upon request, require registrants or licensees to furnish information setting forth the net tons of commercial fertilizer distributed to each location in this state.

(4) Semiannual or annual reports filed after the close of the corresponding reporting period shall pay a late filing fee of twenty-five dollars. Inspection fees which are due and have not been remitted to the department by the due date shall have a late-collection fee of ten percent, but not less than twenty-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.

(5) It shall be a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for the 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. [1993 c 183 § 7; 1987 c 45 § 14.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.370 Official samples—Inspection, analysis, testing—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 15.54.270 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 registrant or licensee and to the purchaser, if known. Upon request and within thirty days, the department shall furnish to the registrant or licensee 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. [1993 c 183 § 8; 1987 c 45 § 16; 1967 ex.s. c 22 § 25.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

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 commercial 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 commercial 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 commercial 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 commercial 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) of this subsection, 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 or licensee. The department shall deposit the amount of the penalty into an account with the agricultural local fund.

(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) of this section.

(4) The civil penalties payable in subsections (1) and (2) of this section shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant or licensee paying said civil penalties. [1998 c 36 § 7; 1993 c 183 § 9; 1987 c 45 § 17; 1967 ex.s. c 22 § 26.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.390 Determination and publication of commercial values—Use in assessment of penalty payments.

For the purpose of determining the commercial value to be applied under the provisions of RCW 15.54.380, the department shall determine and publish the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this state. The values so determined and published shall be used in determining and assessing penalty payments and shall be established by rule. [1987 c 45 § 18; 1967 ex.s. c 22 § 27.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.400 Restrictions on sale—Minimum percentages.

No superphosphate containing less than eighteen percent of available phosphoric acid may be sold or offered for sale in this state. 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. [1987 c 45 § 19; 1967 ex.s. c 22 § 28.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.412 Misbranding. No person may distribute misbranded commercial fertilizer. A commercial fertilizer shall be deemed to be misbranded:

(1) 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) If it is distributed under the name of another fertilizer product;

(3) If its labeling bears any reference to registration under this chapter unless such reference is required by rule under this chapter;

(4) If any word, statement, or other information, required by this chapter or rules adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, design, 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; or

(5) If it purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by the department by rule. In adopting such rules the department shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. [1987 c 45 § 20.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.414 Adulteration. No person may distribute an adulterated commercial fertilizer. A commercial fertilizer is adulterated:

(1) If it contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life are not shown upon the label;

(2) If its composition falls below or differs from that which it is purported to possess by its labeling;

(3) If it contains unwanted viable seed; or

(4) If the concentration of any nonnutritive constituent in a representative sample of commercial fertilizer exceeds the maximum concentration stated on the registration application or on the label. [1998 c 36 § 8; 1993 c 183 § 10; 1987 c 45 § 21.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.420 Unlawful acts. It shall be unlawful for any person to:

- (1) Distribute an adulterated or misbranded commercial fertilizer;
- (2) Fail, refuse, or neglect to place upon or attach to each package 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 commercial fertilizer product which has not been registered with the department;
- (5) Distribute bulk fertilizer without holding a license to do so;
- (6) Refuse or neglect to keep and maintain records, or to make reports when and as required; or
- (7) Make false or fraudulent applications, records, invoices, or reports. [1998 c 36 § 9; 1993 c 183 § 11; 1987 c 45 § 22; 1967 ex.s. c 22 § 30.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

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.]

15.54.433 Fertilizer data base—Public availability—Biennial report to legislature. (1) The department shall expand its fertilizer data base to include additional information required for registration under RCW 15.54.325 and 15.54.330.

(2) Except for confidential information under RCW 15.54.362 regarding fertilizer tonnages distributed in the state, information in the fertilizer data base shall be made available to the public upon request.

(3) The department, and the department of ecology in consultation with the department of health, shall biennially prepare a report to the legislature presenting information on levels of nonnutritive substances in fertilizers. Results from agency testing of products that were sampled shall also be displayed. The first such report will be provided to the legislature by December 1, 1999.

(4) After July 1, 1999, the department shall post on the internet the information contained in applications for fertilizer registration. [1998 c 36 § 21.]

Short title—1998 c 36: See note following RCW 15.54.265.

15.54.436 Cancellation of license to distribute or of registration—Refusal to register if fraudulent or deceptive practices used—Opportunity for hearing. The department may cancel the license to distribute commercial fertilizer or registration of any commercial fertilizer product

or refuse to license a distributor or register any commercial fertilizer product as provided in this chapter due to:

- (1) An incomplete or insufficient license or registration application;
- (2) The misbranding or adulteration of a commercial fertilizer; or
- (3) A violation of this chapter or rules adopted under this chapter.

If the department cancels or refuses to renew an existing license or registration due to the misbranding or adulteration of a commercial fertilizer or due to a violation of this chapter or a rule adopted hereunder, the licensee/registrant or applicant may request a hearing as provided for in chapter 34.05 RCW. [1998 c 36 § 10; 1993 c 183 § 12; 1987 c 45 § 24.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

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 has reasonable cause to believe 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. [1987 c 45 § 23; 1967 ex.s. c 22 § 32.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

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 relabel 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 Violations—Department discretion—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 commercial fertilizer product 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 or her 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 adopted under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1998 c 36 § 11; 1993 c 183 § 13; 1967 ex.s. c 22 § 35.]

Short title—1998 c 36: See note following RCW 15.54.265

15.54.474 Penalty—Failure to comply with chapter or rule. Every person who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person, who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section. [1998 c 36 § 12; 1987 c 45 § 10.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.480 Disposition of moneys. (1) Except as provided in subsection (2) of this section, all moneys collected under the provisions of this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter.

(2) Moneys collected under RCW 15.54.474 shall be deposited in the general fund. [1998 c 36 § 13; 1988 c 254 § 3; 1975 1st ex.s. c 257 § 11; 1967 ex.s. c 22 § 36.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

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 pri-

vate associations, in order to carry out the purposes and provisions of this chapter. [1967 ex.s. c 22 § 37.]

15.54.800 Enforcement of chapter—Adoption of rules. (1) The director shall administer and enforce the provisions of this chapter and any rules adopted under this chapter. All authority and requirements provided for in chapter 34.05 RCW apply to this chapter in the adoption of rules.

(2) The director may adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

- (a) Definitions of terms;
- (b) Determining standards for labeling and registration of commercial fertilizers;
- (c) The collection and examination of commercial fertilizers;
- (d) Recordkeeping by registrants and licensees;
- (e) Regulation of the use and disposal of commercial fertilizers for the protection of ground water and surface water; and
- (f) The safe handling, transportation, storage, display, and distribution of commercial fertilizers.

(3)(a) Standards are established for allowable levels of nonnutritive substances in commercial fertilizers. These standards are Canadian figures for agricultural and agri-food Canadian maximum acceptable cumulative metal additions to soil established under Trade Memorandum T-4-93 dated August 1996. Washington application rates shall be used to ensure that the maximum acceptable cumulative metal additions to soil are not exceeded.

(b) If federal or other risk-based standards are adopted or scientific peer-reviewed studies show that the standards adopted in this section are not at the appropriate level to protect human health or the environment, the department, in consultation with the departments of ecology and health, may initiate a rule making [may adopt a rule] to amend these standards. [1998 c 36 § 15; 1997 c 427 § 3; 1993 c 183 § 14; 1987 c 45 § 9.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.820 Department of ecology—Waste-derived or micronutrient fertilizer—Standards—Written decision—Appeal of decision. (1) After receipt from the department of the completed application required by RCW 15.54.325, the department of ecology shall evaluate whether the use of the proposed waste-derived fertilizer or the micronutrient fertilizer as defined in RCW 15.54.270 is consistent with the following:

- (a) Chapter 70.95 RCW, the solid waste management act;
- (b) Chapter 70.105 RCW, the hazardous waste management act; and
- (c) 42 U.S.C. Sec. 6901 et seq., the resource conservation and recovery act.

(2) The department of ecology shall apply the standards adopted in RCW 15.54.800. If more stringent standards apply under chapter 173-303 WAC for the same constituents,

the department of ecology must use the more stringent standards.

(3) Within sixty days of receiving the completed application, the department of ecology shall advise the department as to whether the application complies with the requirements of subsections (1) and (2) of this section. In making a determination, the department of ecology shall consult with the department of health and the department of labor and industries.

(4) A party aggrieved by a decision of the department of ecology to issue a written approval under this section or to deny the issuance of such an approval may appeal the decision to the pollution control hearings board within thirty days of the decision. Review of such a decision shall be conducted in accordance with chapter 43.21B RCW. Any subsequent appeal of a decision of the hearings board shall be obtained in accordance with RCW 43.21B.180. [1998 c 36 § 16.]

Short title—1998 c 36: See note following RCW 15.54.265.

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.]

15.54.930 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 words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "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.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "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.

(4) "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.

(5) "Department" means the Washington state department of agriculture.

(6) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(7) "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 from the pesticides.

(8) "Director" means the director of the department or a duly authorized representative.

(9) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(10) "EPA" means the United States environmental protection agency.

(11) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(12) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(13) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-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 persons or other animals.

(14) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(15) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(16) "Inert ingredient" means an ingredient which is not an active ingredient.

(17) "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. 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.

(18) "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, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(19) "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.

(20) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(21) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, 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 departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(22) "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.

(23) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(24) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(25) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(26) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(27) "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 a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(28) "Pest control consultant" means any individual who acts as a structural pest control inspector, who sells or offers for sale at other than a licensed pesticide dealer outlet or location where they are employed, or who offers or supplies technical advice, supervision, or aid, or makes recommendations to the user of:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(29) "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, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person 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; and

(c) Any spray adjuvant.

(30) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act.

(31) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(32) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(33) "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 their produce, 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.

(34) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(35) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with

a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(36) "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 rule to be a pest.

(37) "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 of the pesticide, and which is in a package or container separate from that of the pesticide with which it is to be used.

(38) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(39) "Structural pest control inspector" means any individual who performs the service of inspecting a building for wood destroying organisms, their damage, or conditions conducive to their infestation.

(40) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(41) "Weed" means any plant which grows where not wanted. [1992 c 170 § 1; 1991 c 264 § 1; 1989 c 380 § 1; 1982 c 182 § 26; 1979 c 146 § 1; 1971 ex.s. c 190 § 3.]

Severability—1982 c 182: See RCW 19.02.901.

15.58.040 Director's authority—Rules. (1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity category I due to oral inhalation or dermal toxicity. 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 rules restricting or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found 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 the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. 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;

(j) Regulating the labeling of devices;

(k) The establishment of criteria governing the conduct of a structural pest control inspection; and

(1) Declaring crops, when grown to produce seed specifically for crop reproduction purposes, to be nonfood and/or nonfeed sites of pesticide application. The director may include in the rule any restrictions or conditions regarding: (i) The application of pesticides to the designated crops; and (ii) the disposition of any portion of the treated crop.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency. [1997 c 242 § 1; 1996 c 188 § 4; 1991 c 264 § 2; 1989 c 380 § 2; 1971 ex.s. c 190 § 4.]

15.58.045 Disposal of unusable pesticides—Rules.

The director of agriculture may adopt rules to allow the department of agriculture to take possession and dispose of canceled, suspended, or otherwise unusable pesticides held by persons licensed under chapter 15.58 RCW or regulated under chapter 17.21 RCW. For purposes of this section, the department may become licensed as a hazardous waste generator. The department may set fees to cover expenses in connection with pesticide waste received from persons licensed under chapter 15.58 RCW. [1989 c 354 § 57.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.58.050 Registration of pesticides—Generally.

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; or if a written permit has been obtained from the director to distribute or use the specific pesticide for experimental purposes subject to restrictions and conditions set forth in the permit. [1989 c 380 § 3; 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) The complete formula of the pesticide, including the active and inert ingredients: PROVIDED, That confidential business information of a proprietary nature is not made available to any other person and is exempt from disclosure as a public record, as provided by RCW 42.17.260;

(d) Other necessary information required for completion of the department's application for registration form; and

(e) 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 may require a full description of the tests made and the results thereof upon which the claims are based.

(3) The director may prescribe other necessary information by rule. [1989 c 380 § 4; 1971 ex.s. c 190 § 6.]

15.58.065 Protection of privileged or confidential information. (1)

In submitting data required by this chapter, the applicant may:

(a) Mark clearly any portions which in the applicant's opinion are trade secrets or commercial or financial information; and

(b) Submit such marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make public information which in the director's judgment should be privileged or confidential because it contains or relates to trade secrets or commercial or financial information except that, when necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director when necessary under this chapter.

(3) If the director proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, the director shall notify the applicant or registrant in writing, by certified mail. The director shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During

this period, the applicant or registrant may institute an action in the superior court of Thurston county for a declaratory judgment as to whether such information is subject to protection under subsection (2) of this section. [1989 c 380 § 5; 1979 c 146 § 4.]

15.58.070 Pesticide annual registration fee—Deposit in agricultural local fund. (1) Any person desiring to register a pesticide with the department shall pay to the director an annual registration fee for each pesticide registered by the department for such person. The registration fee shall be one hundred forty-five dollars for each pesticide registered.

(2) The revenue generated by the registration fees shall be deposited in the agricultural local fund to support the activities of the pesticide program within the department.

(3) All pesticide registrations expire on December 31st of each year. A registrant may elect to register a pesticide for a two-year period by prepaying for a second year at the time of registration.

(4) Any registration approved by the director and in effect on the 31st day of December for which a renewal application has been made and the proper fee paid, continues in full force and effect until the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of RCW 15.58.110. [1997 c 242 § 2; 1995 c 374 § 66; 1994 c 46 § 1; 1989 c 380 § 6; 1983 c 95 § 2; 1971 ex.s. c 190 § 7.]

Effective date—1997 c 242: "Sections 2, 4 through 7, 11 through 15, 17, and 22 of this act take effect January 1, 1998." [1997 c 242 § 23.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Effective date—1994 c 46: "Sections 1 through 20, 26, and 27 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1994]." [1994 c 46 § 28.]

15.58.080 Additional fee for late registration renewal. If the renewal of a pesticide registration or special needs registration is not filed before January 1st of each year, an additional fee of twenty-five dollars shall be assessed and added to the original fee. The additional fee shall be paid by the applicant before the registration renewal for that pesticide shall be issued unless the applicant furnishes an affidavit certifying that the applicant did not distribute the unregistered pesticide during the period of nonregistration. The payment of the additional fee is not a bar to any prosecution for doing business without proper registry. [1994 c 46 § 2; 1989 c 380 § 7; 1983 c 95 § 3; 1971 ex.s. c 190 § 8.]

Effective date—1994 c 46: See note following RCW 15.58.070.

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. (1) The director shall require the information required under RCW 15.58.060

and shall register the label or labeling for such pesticide if he determines that:

(a) Its composition is such as to warrant the proposed claims for it;

(b) Its labeling and other material required to be submitted comply with the requirements of this chapter;

(c) It will perform its intended function without unreasonable adverse effects on the environment;

(d) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment;

(e) In the case of any pesticide subject to section 24(c) of FIFRA, it meets (1) (a), (b), (c), and (d) of this section and the following criteria:

(i) The proposed classification for general use, for restricted use, or for both is in conformity with section 3(d) of FIFRA;

(ii) A special local need exists.

(2) The director shall not make any lack of essentiality a criterion for denying registration of any pesticide. [1979 c 146 § 2; 1971 ex.s. c 190 § 10.]

15.58.110 Refusing or canceling registration—Procedure. (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 rules adopted under this chapter, the registrant shall be notified 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 34.05 RCW.

(2) The director may, when the director determines that a pesticide or its labeling does not comply with the provisions of this chapter or the rules adopted under this chapter, cancel the registration of a pesticide after a hearing in accordance with the provisions of chapter 34.05 RCW. [1989 c 380 § 8; 1971 ex.s. c 190 § 11.]

15.58.120 Suspension of registration when hazard to public health. The director may, when the director determines that there is or may be an imminent hazard to the public health and welfare, suspend on the director's own motion, the registration of a pesticide in conformance with the provisions of chapter 34.05 RCW. [1989 c 380 § 9; 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 rules under this chapter;

(c) If any word, statement, or other information, required by this chapter or rules adopted under 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 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 people, 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 people, 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 rules adopted under this chapter.

(3) To a spray adjuvant when the label fails to state the type or function of the principal functioning agents. [1989 c 380 § 10; 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 practices. (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 rules 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 rule;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating rules 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 pesticide to any person who is required by law or rules promulgated under such law to be certified, licensed, or have a permit to use or purchase the pesticide unless such person or the person's agent, to whom sale or delivery is made, has a valid certification, license, or permit to use or purchase the kind and quantity of such 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 rules 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 rules adopted thereunder;

(c) For any person to use or cause to be used any pesticide contrary to label directions or to regulations of the director if those regulations differ from or further restrict the label directions: PROVIDED, The compliance to the term "contrary to label directions" is enforced by the director consistent with the intent of this chapter;

(d) For any person to use for his or her 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;

(e) For any person to make false, misleading, or erroneous statements or reports concerning any pest during or after a pest inspection or to fail to comply with criteria established by rule for structural pest control inspections;

(f) For any person to make false, misleading, or erroneous statements or reports in connection with any pesticide complaint or investigation. [1991 c 264 § 3; 1989 c 380 § 11; 1987 c 45 § 25; 1979 c 146 § 3; 1971 ex.s. c 190 § 15.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.58.160 Violations of chapter—"Stop sale, use or removal" order. 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 rules under this chapter, the director 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, 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. [1989 c 380 § 12; 1971 ex.s. c 190 § 16.]

15.58.170 "Stop sale, use or removal" order—Adjudication. (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 rules adopted under this chapter 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 rules adopted under this chapter: 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: PROVIDED, That the pesticide or device shall not be sold contrary to the provisions of this chapter or rules adopted under this chapter. 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. [1997 c 242 § 3; 1989 c 380 § 13; 1971 ex.s. c 190 § 17.]

15.58.180 Pesticide dealer license—Generally. (1) Except as provided in subsections (4) and (5) of this section, it is unlawful for any person to act in the capacity of a pesticide dealer or advertise as or assume to act as a pesticide dealer without first having obtained an annual license from the director. The license shall expire on the master license expiration date. A license is required for each location or outlet located within this state from which pesticides are distributed. A 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 or her principal out-of-state location or outlet, but such licensed out-of-state pesticide dealer is exempt from the pesticide dealer manager requirements.

(2) Application for a license shall be accompanied by a fee of fifty dollars and shall be made through the master license system and shall include the full name of the person applying for the license and the name of the individual within the state designated as the pesticide dealer manager. If the 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. The 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 is 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) This section does not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of the applicator's pesticide application service when such pesticides are dispensed only through apparatuses used for such pesticide application, or (b) any federal, state, county, or municipal agency that provides pesticides only for its own programs.

(5) A user of a pesticide may distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide without obtaining a pesticide dealer's license if the exclusive purpose of distributing the pesticide is keeping it from becoming a hazardous waste as defined in chapter 70.105 RCW. [1997 c 242 § 4; 1989 c 380 § 14; 1983 c 95 § 4; 1982 c 182 § 27; 1971 ex.s. c 190 § 18.]

Effective date—1997 c 242: See note following RCW 15.58.070.

Severability—1982 c 182: See RCW 19.02.901.

Master license system: Chapter 19.02 RCW.

15.58.200 Pesticide dealer manager—License qualifications. The director shall require each pesticide dealer manager to demonstrate to the director knowledge of pesticide laws and rules; 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. Application for a license shall be accompanied by a fee of twenty-five

dollars. The pesticide dealer manager license shall be an annual license expiring on a date set by rule by the director. [1997 c 242 § 5; 1992 c 170 § 2; 1991 c 109 § 38; 1989 c 380 § 15; 1981 c 297 § 19; 1971 ex.s. c 190 § 20.]

Effective date—1997 c 242: See note following RCW 15.58.070

Severability—1981 c 297: See note following RCW 15.36.201.

15.58.210 Pest control consultant licenses—Exemptions. (1) Except as provided in subsection (2) of this section, no individual may perform services as a pest control consultant without obtaining a license from the director. The license shall expire annually on a date set by rule by the director. Except as provided in subsection (3) of this section, no individual may act as a structural pest control inspector without first obtaining from the director a pest control consultant license in the special category of structural pest control inspector. Application for a license shall be on a form prescribed by the director and shall be accompanied by a fee of forty-five dollars.

(2) The following are exempt from the licensing requirements of subsection (1) of this section when acting within the authorities of their existing licenses issued under chapter 17.21 RCW: Licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators. The following are also exempt from the licensing requirements of subsection (1) of this section: Employees of federal, state, county, or municipal agencies when acting in their official governmental 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.

(3) The following are exempt from the structural pest control inspector licensing requirement: Individuals inspecting for damage caused by wood destroying organisms if such inspections are solely for the purpose of: (a) Repairing or making specific recommendations for the repair of such damage, or (b) assessing a monetary value for the structure inspected. Individuals performing wood destroying organism inspections that incorporate but are not limited to the activities described in (a) or (b) of this subsection are not exempt from the structural pest control inspector licensing requirement. [1997 c 242 § 6; 1992 c 170 § 3. Prior: 1991 c 264 § 4; 1991 c 109 § 39; 1989 c 380 § 16; 1983 c 95 § 5; 1971 ex.s. c 190 § 21.]

Effective date—1997 c 242: See note following RCW 15.58.070.

15.58.220 Public pest control consultant license. 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(28). No person shall act as a public pest control consultant without first obtaining a license from the director. The license shall expire annually on a date set by rule by the director. Application for a license shall be on a form prescribed by the director and shall be accompanied by a fee of twenty-five dollars. Federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or a duly authorized representative, public pest control consultants licensed and working in the health vector field, and public operators licensed under

RCW 17.21.220 shall be exempt from this licensing provision. [1997 c 242 § 7; 1991 c 109 § 40; 1989 c 380 § 17; 1986 c 203 § 4; 1981 c 297 § 20; 1971 ex.s. c 190 § 22.]

Effective date—1997 c 242: See note following RCW 15.58.070.

Severability—1986 c 203: See note following RCW 15.17.245

Severability—1981 c 297: See note following RCW 15.36.201.

15.58.230 Consultant's license—Requirements. 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 the applicant has applied prior to issuing the license. [1989 c 380 § 18; 1971 ex.s. c 190 § 23.]

15.58.233 Renewal of licenses—Recertification standards. (1) The director may renew any license issued under this chapter subject to the recertification standards identified in subsection (2) of this section or an examination requiring new knowledge that may be required to apply pesticides.

(2) Except as provided in subsection (3) of this section, all individuals licensed under this chapter shall meet the recertification standards identified in (a) or (b) of this subsection, every five years, in order to qualify for continuing licensure.

(a) Licensed pesticide applicators may qualify for continued licensure through accumulation of recertification credits. Individuals licensed under this chapter shall accumulate a minimum of forty department-approved credits every five years with no more than fifteen credits allowed per year.

(b) Licensed pesticide applicators may qualify for continued licensure through meeting the examination requirements necessary to become licensed in those areas in which the licensee operates.

(3) At the termination of a licensee's five-year recertification period, the director may waive the recertification requirements if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency-approved government agency plan. [1997 c 242 § 10.]

15.58.235 Renewal of licenses—Delinquency. (1) If an application for renewal of a pesticide dealer license is not filed on or before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license is issued.

(2) If application for renewal of any license provided for in this chapter other than the pesticide dealer license is not filed on or before the expiration date of the license, a penalty equivalent to the license fee shall be assessed and added to the original fee, and shall be paid by the applicant before the renewal license is issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit

certifying that he or she has not acted as a licensee subsequent to the expiration of the license.

(3) Any license for which a renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied. [1989 c 380 § 19.]

15.58.240 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 agricultural crops, ornamentals, or noncrop land herbicides. If the licensee has a classified license the licensee 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 the 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 charge an examination fee established by the director by rule when an examination is necessary, before a license may be issued or when application for a license and examination is made at other than a regularly scheduled examination date. The director may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination or other recertification standards as determined by the director when deemed necessary because new knowledge or new classifications are required to carry out the responsibilities of the licensee. [1989 c 380 § 20; 1986 c 203 § 5; 1971 ex.s. c 190 § 24.]

Severability—1986 c 203: See note following RCW 15.17.245.

15.58.250 Recordkeeping requirements. 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 the director 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. [1989 c 380 § 22; 1971 ex.s. c 190 § 25.]

15.58.260 Civil penalties and/or denial, suspension, or revocation of license, registration or permit. The director is authorized to impose a civil penalty and/or 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 34.05 RCW (Administrative Procedure Act) in any case in which the director finds there has been a failure or refusal to comply with the provisions of this chapter or rules adopted under this chapter. [1989 c 380 § 23; 1985 c 158 § 2; 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 Sampling and examination of pesticides or devices—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 rules adopted under this chapter, 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 rules adopted under this chapter 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. [1989 c 380 § 24; 1971 ex.s. c 190 § 28.]

15.58.290 Minor violations, warning notice in writing. 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 the director believes that the public interest will be best served by a suitable notice of warning in writing. [1989 c 380 § 25; 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 Violation of chapter—Misdemeanor. Any person violating any provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor. [1989 c 380 § 26; 1971 ex.s. c 190 § 33.]

15.58.335 Civil penalty. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty herein provided. [1989 c 380 § 27; 1985 c 158 § 1.]

15.58.340 Injunction. 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 a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1989 c 380 § 28; 1971 ex.s. c 190 § 34.]

15.58.345 Damages—Civil action not precluded. Nothing in this chapter shall preclude any person aggrieved by a violation of this chapter from bringing suit in a court of competent jurisdiction for damages arising from the violation. [1989 c 380 § 29.]

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.]

15.58.400 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.]

15.58.405 Emergency situations—Special local needs—Experimental use permits. For the purpose of exercising the authority granted to the state under the provisions of FIFRA, the director may:

(1) Meet emergency conditions in this state by applying for an exemption from any provision of FIFRA as provided for by section 18 of that act. If such exemption is granted by the administrator of EPA the director may carry out and enforce the requirements and conditions of the exemption;

(2) Comply with the requirements necessary to issue special local needs registration under section 24(c) of FIFRA; and

(3) Comply with the requirements necessary to issue experimental use permits under section 5(f) of FIFRA. [1979 c 146 § 5.]

15.58.411 Use of license fees—Deposit of money collected for civil penalties. All license fees collected under this chapter shall be paid to the director for use exclusively in the enforcement of this chapter. All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund. [1997 c 242 § 8; 1995 c 374 § 67.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

15.58.420 Report to legislature. By February 1st of each year the department shall report to the appropriate committees of the house of representatives and the senate on the activities of the department under this chapter. The report shall include, at a minimum, a review of the department's enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed. [1997 c 242 § 9; 1989 c 380 § 30.]

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 rules 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 rules shall be considered to have been adopted under the provisions of this chapter. [1989 c 380 § 31; 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.]

15.58.940 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.]

15.58.941 Severability—1979 c 146. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 146 § 7.]

15.58.942 Severability—1989 c 380. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 380 § 88.]

Chapter 15.60 APIARIES

Sections

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Honey bee commission: Chapter 15.62 RCW.

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

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the state department of agriculture or the director's authorized representative.

(3) "Apiary" means a site where hives of bees or hives are kept or found.

(4) "Abandoned hive" means any hive, with or without bees, that evidences a lack of being properly managed in that it has not been supered in the spring, except nucs, or unsupered in the fall, or is otherwise unmanaged and left without authorization and unattended on the property of another person or on public land.

(5) "Apiarist" means any person who owns bees or is a keeper of bees in Washington.

(6) "Beekeeping equipment" means any implements or devices used in the manipulation of bees, their brood, or hives in an apiary.

(7) "Bees" means adult insects, eggs, larvae, pupae, or other immature stages of the species *Apis mellifera*.

(8) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter and accompanying the movement of inspected bees, bee hives, or beekeeping equipment.

(9) "Colony" refers to a natural group of bees having a queen or queens.

(10) "Compliance agreement" means a written agreement between the department and a person engaged in apiculture, or handling, selling, or moving of hives or beekeeping equipment in which the person agrees to comply with stipulated requirements.

(11) "Feral colony" means a colony of bees in a natural cavity or a manufactured structure not intended for the keeping of bees on movable frames and comb.

(12) "Swarm" means a natural group of bees having a queen or queens, which is the progeny of a parent colony, without a hive, and not a feral colony.

(13) "Disease" means American foulbrood, European foulbrood, chalkbrood, nosema, sacbrood, or any other viral, fungal, bacterial or insect-related disease affecting bees or their brood.

(14) "Regulated bee pests" means a disease of bees for which maximum allowable limits of infection, or mites, or other parasites are set in rule.

(15) "Hive" means a manufactured receptacle or container prepared for the use of bees, that includes movable frames, combs, and substances deposited into the hive by bees.

(16) "Person" means a natural person, individual, firm, partnership, company, society, association, corporation or every officer, agent, or employee of one of these entities.

(17) "Bee pests" means a disease, mite, or other parasite that causes injury to bees.

(18) "Nets" means a device that is made of fabricated material and that is designed and utilized to prevent the escape of bees from bee hives during transit.

(19) "Apparently free" means no specified bee pest was found during inspection of survey activities.

(20) "Substantially free" means levels of specified bee pests found during inspection or survey activities were within established tolerances.

(21) "Africanized honey bee" means any bee of the subspecies *Apis mellifera scutellata*.

(22) "Super" means the portion of a hive in which honey is stored by bees.

(23) "Broker" means a person, engaged in pollinating agricultural crops, using hives that are owned by another person.

(24) "Grower" means a person engaged in producing agricultural crops, and a user of honey bees for pollination of the crops. [1994 c 178 § 1; 1993 c 89 § 1; 1988 c 4 § 1; 1977 ex.s. c 362 § 1; 1961 c 11 § 15.60.005. Prior: 1955 c 271 § 1.]

15.60.007 Industry apiary program. There is created within the department of agriculture an industry apiary program. The director shall: Provide regulation and inspection services, assure availability of bee colonies for pollination, facilitate the interstate movement of honey bees, promote improved apicultural practices, combat bee pests that pose an economic threat to the industry, and, in cooperation with the cooperative extension program of Washington State University, provide education to promote the vitality of the apiary industry. [1994 c 178 § 2; 1993 c 89 § 2; 1988 c 4 § 14.]

15.60.010 Apiary advisory committee. An apiary advisory committee is established to advise the director on the administration of this chapter. The apiary advisory committee may consist of up to eleven members.

(1) The committee shall include six apiarists, appointed by the director, and representing the major geographical divisions of the beekeeping industry in the state as established in rule. In making an appointment, the director shall seek nominations from the beekeepers' organizations within the geographic area and from nonaffiliated apiarists. Apiarists may nominate themselves.

(2) The committee shall include the director and a representative from the Washington State University apiary program or cooperative extension.

(3) The committee may include up to three representatives of receivers of pollination services.

(4) The terms of the apiarist members of the committee shall be staggered and the members shall serve a term of three years and until their successors have been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any reason, the vacancy shall be filled by the director under the provisions of this section.

(5) The committee shall meet at least once yearly. It may also meet at the call of the director or the request of any three members of the committee. Members of the committee shall serve without compensation but shall be reimbursed for travel expenses incurred in attending meetings of the committee and any other official duty authorized by the committee and approved by the director, pursuant to RCW 43.03.050 and 43.03.060, if apiarists are charged a registration fee, under RCW 15.60.050, to cover the expenses

of the committee. [1994 c 178 § 3; 1993 c 89 § 3; 1975-'76 2nd ex.s. c 34 § 16; 1961 c 11 § 15.60.010. Prior: 1933 ex.s. c 59 § 1; RRS § 3170-1; prior: 1919 c 116 § 1.]

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

15.60.015 Bee pests—Control—Quarantine. (1) The director shall determine, with the advice of the apiary advisory committee, if a bee pest represents a significant threat to the apiary industry in the state and may by rule establish maximum allowable levels for these bee pests, for movement of colonies into or within Washington and prescribe procedures for inspection, treatment, or other mitigation measures if such tolerances are exceeded.

(2) The director may inspect apiaries for the presence of bee pests. To support the general health of the apiary industry, the director may investigate outbreaks of any bee disease or infestations of other pests, or bee losses suspected of being caused by pesticides and other chemicals; and conduct surveys for the presence of or levels of a bee pest.

(3) It is the responsibility of every apiarist to perform or cause to be performed any acts necessary to control regulated bee pests in the apiarist's bees or bee equipment where levels exceed maximum allowable limits set in rule. If the director finds a hive in an apiary to be infected or infested beyond maximum allowable limits by bee pests, the director may cause the apiary to be quarantined.

(a) The director shall plainly mark the hives containing regulated bee pests and shall, in writing, notify the apiarist stating the disease or pest found in each hive, identifying the hive by reference to the mark placed upon it, and ordering eradication of such disease or pest as prescribed by the director within a specified time. When the apiarist cannot be contacted immediately, the notice shall be served by placing it conspicuously in the apiary, or by mailing a copy to the apiarist's registered address. If the apiarist fails to take action to control the bee pest in accordance with the notice, the director may control the bee pest or cause the bee pest to be controlled.

(b) When the apiarist cannot be determined, the notice shall be served by posting the notice conspicuously in the apiary. Any apiary presenting an immediate threat of infestation or infection to other apiaries may be impounded by the director and moved to a location where it no longer poses an immediate threat of infestation or infection to other apiaries.

(c) The quarantine shall not be lifted until such time as the director determines that the regulated bee pest has been controlled. During the time the apiary is quarantined, no bees, honey, hives, beekeeping equipment, or other material may be removed from the apiary without written authorization from the director.

(4) A person who inspects an infected or infested hive or knowingly comes in contact with a bee pest, shall, before proceeding to another apiary, disinfect their person, clothing, gloves, tools, and beekeeping equipment that have come in contact with infected or infested bees or material.

(5) An apiarist whose apiary has been found to be infected or infested by a regulated bee pest shall be entitled, upon written request, to a scientific analysis of the infected or infested hive before any action to control the bee pest is taken. The results of the analysis shall be conclusive as to

whether the apiary is infested or infected with a regulated bee pest. The costs of scientific analysis shall be paid by the apiarist if the apiary is found to be infested or infected. If the apiary is found not to be infested or infected, the department shall pay the cost of the scientific analysis. The laboratory performing the scientific analysis shall be approved by the director.

(6) Except as provided in subsection (5) of this section, the apiarist shall be responsible for all costs of the department resulting from the quarantine or impoundment of an apiary or the control of a bee pest.

(7) A person aggrieved by an order issued or act taken by the director pursuant to this section is, upon application, entitled to a review of that order or act pursuant to RCW 34.05.479. The application shall serve to stay any order or action, other than a quarantine order, pending the adjudicative proceeding. [1993 c 89 § 4; 1988 c 4 § 2; 1977 ex.s. c 362 § 2; 1961 c 11 § 15.60.015. Prior: 1955 c 271 § 2.]

15.60.020 Abandoned hives—Impoundment. (1) Whenever the director finds an abandoned hive, or a hive wherein the combs or frames are immovable or that are so constructed as to impede or hinder inspection, and if the hive constitutes a threat of infestation or infection by a bee pest to bees, the director may impound the hive and remove it to a place of safety.

(2) The director shall make a reasonable effort to identify the owner of the hive. If the owner of the hive can be determined, the director shall notify the owner that a violation of this chapter exists. The notice shall be in the same manner as that provided for bee pests and shall specify the actions that the owner must take to eliminate the threat of infestation or infection by bee pests to bees before the owner can take possession of the hive. Failure of the owner to take the necessary action within the time specified in the notice shall constitute abandonment, and the director may take any action necessary to eliminate the threat of infestation or infection to bees.

(3) If the owner of the hive cannot be reasonably ascertained then the director shall provide for notice by publication in a paper of general circulation at least once each week for two consecutive weeks. Notice by publication need not be provided where the cost of publication exceeds the value of the hive.

(4) Whenever the owner of the hive cannot be determined, or can be determined but fails to take possession of the hive, the director may sell or otherwise dispose of the hive.

(5) The owner of an abandoned hive is liable for all costs of the department resulting from the impounding or sale of a hive and any action taken to eliminate the threat of infestation or infection by a bee pest to bees.

(6) A person aggrieved by an order issued or act taken by the director pursuant to this section is, upon application, entitled to a review of that order or act pursuant to RCW 34.05.479. The application shall serve to stay any order or action pending the adjudicative proceeding. [1993 c 89 § 5; 1988 c 4 § 3; 1975-'76 2nd ex.s. c 34 § 17; 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.]

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

15.60.025 Specific rule-making authority. In addition to the powers conferred on the director under other provisions of this chapter, the director shall have the power to adopt rules with the advice of the apiary advisory committee and pursuant to the administrative procedure act, chapter 34.05 RCW:

(1) Specifying marking and identification requirements for all hives of bees in the state of Washington including resident colonies, migratory colonies registered in Washington, and colonies brought into the state for pollination services;

(2) Establishing requirements for netting and other handling of bees in transit;

(3) Prescribing bee breeding procedures and standards to prevent Africanization and permitting importation pursuant to the conditions set forth in RCW 15.60.140;

(4) Establishing standards for certification of bees, bee hives, and beekeeping equipment including but not limited to:

(a) Standards of colony strength for hives of bees for pollination services;

(b) Standards for queen bee production and marketing;

(5) A beekeeper certification program that may provide for decreased levels of inspection for those beekeepers whose apiaries consistently have levels of disease within established tolerances;

(6) Establishing fees for inspection or certification services;

(7) Conducting such activities as may be otherwise necessary for carrying out the purposes of this chapter. [1993 c 89 § 6; 1988 c 4 § 4; 1977 ex.s. c 362 § 8.]

15.60.030 Bringing bees or equipment into state—Requirements. (1) It shall be unlawful for a person to bring any packaged bees, queens, hives with or without bees, or other used beekeeping equipment into this state for any purpose without first having secured a certificate of inspection from the state of origin department of agriculture, which shall be based on an official inspection, certifying compliance with the requirements of this chapter and rules adopted under this chapter. New equipment without bees shall not be regulated.

(2) A copy of the certificate shall be sent to the department by mail or telefax prior to shipment of hives with or without bees, or equipment into the state and a copy shall accompany the shipment. Queens and packaged bees are exempt from this subsection. The certificate shall verify that the hives in a shipment are in compliance with the limits established in rule for regulated bee pests, the state of origin, the number of hives or description of other regulated items in the shipment, and the destination of the shipment, including the name and complete address and phone number of the person in charge of the apiary location at destination.

(3) Queen and package bee producers shall provide the department a list of Washington destination shipments with names and addresses of receivers by August 1st of each calendar year.

(4) Packaged bees, queens, hives with or without bees, and beekeeping equipment found by the director to have

been imported in violation of this section may be held for inspection by the department. Inspection costs shall be charged to the apiarist in charge of the bees, hives, or equipment. Fees collected shall be placed in the *apiary inspection account established in RCW 15.60.040.

(5) A Washington registered apiarist who obtains a valid inspection certificate and moves bees out of state for wintering shall be allowed to return the bees to the state without an additional inspection certificate provided that the bees are returned to the state prior to May 15th each year. [1993 c 89 § 7; 1988 c 4 § 5; 1981 c 296 § 7; 1977 ex.s. c 362 § 3; 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.]

***Reviser's note:** The "apiary inspection account" was redesignated as the "industry apiary program account" by 1994 c 178 § 4.

Severability—1981 c 296: See note following RCW 15 08 010.

15.60.040 Pollination service fee—Industry apiary program account. (1) There is hereby established a fee on the use, by growers of agricultural crops, of bee pollination services provided by others. This pollination service fee is in the amount of fifty cents for each setting of each hive containing a colony that is used by the grower. The fee shall be paid by the grower using the service, shall be collected by the beekeeper providing the service, and shall be remitted by the beekeeper to the department as provided by rules adopted by the director. All such fees shall be deposited in the industry apiary program account. Revenues from these fees shall be directed to use in providing services to the apiary industry that assist in ensuring the vitality and availability of bees for commercial pollination services for the agricultural industry.

(2) There is established an industry apiary program account within the agricultural local fund. All money collected under this chapter including fees for requested services, required inspections, or treatments, registration fees, and apiary assessments shall be placed in the industry apiary program account. Money in the account may only be used to carry out the purposes of this chapter. No appropriation is required for disbursement from the industry apiary program account. [1994 c 178 § 4; 1993 c 89 § 8; 1988 c 4 § 6; 1981 c 296 § 8; 1977 ex.s. c 362 § 4; 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.]

Severability—1981 c 296: See note following RCW 15 08 010.

15.60.042 Request of department services. A registered apiarist or other interested party may request the services of an apiary inspector to provide inspection and certification services to facilitate the movement of honey bees, bee hives, or beekeeping equipment or to provide other requested services. The director shall prescribe a fee for those services that shall, as closely as practical, cover the full cost of the services rendered, including the salaries and expenses of the personnel involved. [1993 c 89 § 9; 1988 c 4 § 7.]

15.60.043 Fees, charges, and penalties. The inspection fees, registration fees, pollination service fees, and other charges provided in this chapter shall become due and payable upon billing by the department. A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears. In addition to any other penalties, the director may refuse to perform an inspection or certification service for a person in arrears unless the person makes payment in full prior to such inspection or certification service. [1994 c 178 § 5; 1993 c 89 § 10; 1988 c 4 § 8; 1981 c 296 § 9; 1977 ex.s. c 362 § 9.]

Severability—1981 c 296: See note following RCW 15.08.010.

15.60.050 Registration of hives. Each person owning one or more hives with bees, brokers of hives, and beekeepers resident in other states who operate hives in Washington, shall register with the director on or before April 1st each year.

(1) Registration application shall include the name, address, and phone number of the owner or broker, the number of colonies of bees owned, brokered, or operated in Washington, and such registration fee as may be prescribed in rule under subsection (2) of this section. The director shall issue to each resident apiarist registered with the department an apiarist identification number. The apiarist identification number shall be displayed on hives of an apiary in a manner prescribed by the director in rule.

(2) A registration fee may be set in rule by the director, with the advice of the apiary advisory committee. The fee shall be used for covering the expenses of the apiary advisory committee and may be used for supporting the industry apiary program of the department or funding research projects of benefit to the apiary industry that the director may select upon the advice of the apiary advisory committee. [1994 c 178 § 6; 1993 c 89 § 11; 1988 c 4 § 9; 1977 ex.s. c 362 § 5; 1961 c 11 § 15.60.050. Prior: 1933 ex.s. c 59 § 6; RRS § 3170-6.]

15.60.100 Director's powers. In addition to the powers conferred on the director under other provisions of this chapter, the director shall have the power to:

(1) 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 purposes and provisions of this chapter.

(2) Conduct educational or other programs in cooperation with Washington State University cooperative extension to enhance the welfare of Washington apiculture.

(3) Enter into compliance and other agreements with persons engaged in apiculture, or handling, selling, or moving of hives or beekeeping equipment.

(4) Do such things as may be necessary and incidental to his or her functions pursuant to this chapter. [1993 c 89 § 12; 1988 c 4 § 10; 1981 c 296 § 10; 1977 ex.s. c 362 § 7; 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.]

Severability—1981 c 296: See note following RCW 15.08.010.

15.60.110 Access and entry by director. The director shall have access at reasonable times to all apiaries and places where beekeeping equipment is kept to conduct inspections for the presence of bee pests and to otherwise carry out the purposes of this chapter. If the director is denied access, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon the showing of good cause issue the search warrant for the purposes requested. [1993 c 89 § 13; 1988 c 4 § 11; 1977 ex.s. c 362 § 6; 1961 c 11 § 15.60.110. Prior: 1955 c 271 § 10; prior: 1941 c 130 § 3, part; Rem. Supp. 1941 § 3183-3, part.]

15.60.120 Queen bee rearing apiaries. (1) Every person rearing queen bees for sale or use by another apiarist shall request each queen rearing apiary be inspected for the presence of disease during active brood rearing. No person may ship queen bees from a queen rearing apiary without a certificate of inspection certifying that such apiary is apparently free from disease.

(2) The apiarist rearing queen bees may be required to do so under procedures and standards as may be established in rule for assuring freedom from bee pests and Africanized honey bees. [1993 c 89 § 14; 1988 c 4 § 12; 1981 c 296 § 11; 1961 c 11 § 15.60.120. Prior: 1933 ex.s. c 59 § 8, part; RRS § 3170-8, part.]

Severability—1981 c 296: See note following RCW 15.08.010.

15.60.140 Africanized honey bees. (1) Africanized honey bees may be imported into the state under the following conditions:

(a) Hybrids of *Apis mellifera scutellata* may be permitted into Washington if they have been bred or certified for acceptable behavior and approved by the director.

(b) Africanized honey bees or their hybrids may be imported under terms and conditions established in permit for research purposes.

(c) If the director, with concurrence from the apiary advisory committee and after opportunity for one or more public hearings, pursuant to adoption of rules:

(i) Finds that Africanized honey bees have become widely established and that exclusion is no longer technically feasible; and

(ii) Determines that deregulation is in the best interest of Washington agriculture; and

(iii) Has approved a plan to mitigate the impact of Africanized honey bees.

(2) If the director finds Africanized honey bees or hybrids of Africanized honey bees that have been imported into the state under circumstances other than those provided in subsection (1) of this section, the director may impound and destroy or cause to be destroyed such bees. The apiarist shall be entitled upon written request to a scientific analysis under the terms provided in RCW 15.60.015. A person aggrieved by an order issued or act taken by the director pursuant to this subsection is, upon application, entitled to a review of that order or act pursuant to RCW 34.05.479. The application shall serve to stay an order or action pending the adjudicative proceeding unless the director determines that

the bees cannot be impounded without presenting an imminent threat of Africanization to other bees within the state. [1993 c 89 § 15; 1988 c 4 § 13; 1981 c 296 § 12; 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.]

Severability—1981 c 296: See note following RCW 15.08.010.

15.60.150 Unlawful acts enumerated. It shall be unlawful for a person to:

(1) Willfully or maliciously kill honey bees in an apiary, 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 except that bees in swarms or feral colonies may be depopulated;

(2) Alter an official certificate or other official inspection document for bees, hives, or beekeeping equipment covered by this chapter or to represent a document as an official certificate where such is not the case;

(3) Knowingly import into the state bees of the subspecies *Apis mellifera scutellata* (Africanized honey bees) except as provided in RCW 15.60.120;

(4) Resist, impede, or hinder the director in the discharge of the director's duties and responsibilities under this chapter;

(5) Fail to take prompt and sufficient action to control regulated bee pests in excess of limits set in rule;

(6) Abandon a hive;

(7) Maintain a hive, except for educational purposes, wherein the combs or frames are immovable or that is so constructed as to impede or hinder inspection. [1993 c 89 § 16; 1981 c 296 § 13; 1961 c 11 § 15.60.150. Prior: 1897 c 12 §§ 1, 2; no RRS.]

Severability—1981 c 296: See note following RCW 15.08.010.

15.60.170 Violations—Penalty. (1) A person who violates or fails to comply with any of the provisions of this chapter or any rule adopted under this chapter shall be guilty of a misdemeanor, and for a second and each subsequent violation a gross misdemeanor.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter or any rule adopted under this chapter and that violation has not been punished as a misdemeanor or gross misdemeanor, the director may impose and collect a civil penalty not exceeding one thousand dollars for each violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of omission or commission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty. [1993 c 89 § 17; 1991 c 363 § 15; 1989 c 354 § 64.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Severability—1989 c 354: See note following RCW 15.36.012.

15.60.180 Apiary coordinated areas—Hearing to establish. When the county legislative authority determines that it would be desirable to establish an apiary coordinated area or areas in their county, they shall make an order fixing a time and place when a hearing will be held, notice of

which shall be published at least once each week for two successive weeks in a newspaper having general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, to hear all persons interested in the establishment of apiary coordinated areas as defined in RCW 15.60.180, 15.60.190, and 15.60.210. [1993 c 89 § 18; 1989 c 354 § 65.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.60.190 Apiary coordinated areas—Order describing. Within thirty days after the conclusion of any such hearing the county legislative authority shall make an order describing the apiary coordinated areas within the county as to the maximum allowable number of hives per site, the minimum allowable distance between sites, and the minimum required setback from property lines. The order shall be entered upon the records of the county and published in a newspaper having general circulation in the county at least once each week for four successive weeks. [1989 c 354 § 66.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.60.210 Apiary coordinated areas—Boundary change procedure. When the county legislative authority of any county deems it advisable to change the boundary or boundaries of any apiary coordinated area, a hearing shall be held in the same manner as provided in RCW 15.60.180. If the county legislative authority decides to change the boundary or boundaries of any apiary coordinated area or areas, they shall within thirty days after the conclusion of such hearing make an order describing the change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in the county once each week for four successive weeks. [1989 c 354 § 68.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.60.220 Apiary coordinated areas within certain counties. The county legislative authority of any county with a population of from forty thousand to less than seventy thousand located east of the Cascade crest and bordering in the southern side of the Snake river shall have the power to designate by an order made and published, as provided in RCW 15.60.190, certain territories as apiary coordinated areas in which they may designate the number of colonies per apiary, the distance between apiaries, the minimum required setback distance from property lines, and the time of year the regulations shall be in effect. No territory so designated shall be less than two square miles in area. [1993 c 89 § 20.]

15.60.230 Injunction. The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted under this chapter in the superior court in the county in which such violation occurs notwithstanding the existence of other remedies at law. [1993 c 89 § 19.]

15.60.900 Severability—1977 ex.s. c 362. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the

application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 362 § 11.]

Chapter 15.61

LADYBUGS AND OTHER BENEFICIAL INSECTS

Sections

- 15.61.010 Administrative declaration—Regulation of commercial movement.
- 15.61.020 Intergovernmental cooperation.
- 15.61.030 Injunctions.
- 15.61.040 Nonapplicability to honey bees and insects used for research.
- 15.61.050 Violations—Penalty.
- 15.61.900 Severability—1963 c 232.

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 34.05 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 15.62 HONEY BEE COMMISSION

Sections

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15.62.910	Severability—1989 c 5.

Apiary regulation: Chapter 15.60 RCW.

15.62.010 Purpose and findings. The purpose of this chapter is to advance the public welfare and education and to promote the interest, products, services, and stabilization of Washington's honey bee industry.

The legislature finds that:

(1) Increasing the consumption of products of the honey bee industry and promoting the use of its services and stabilizing the honey bee industry within the state and nation is a valid and necessary exercise of the power of the state to protect the public health, to provide for the economic development of the state, and to promote the welfare of the people of the state;

(2) Honey bee industry products produced and services provided in Washington make an important contribution to the agricultural industry of the state of Washington. The business of researching, marketing, and distributing such products and the promotion of its services is in the public interest;

(3) It is necessary to enhance the reputation of Washington honey bee industry products and services in domestic and national markets;

(4) It is necessary to promote and educate the public regarding the value of honey bee industry products and services, and to spread that knowledge throughout the state

and nation to increase the awareness and consumption of honey bee products and the use of honey bee services;

(5) State and national markets for Washington honey bee industry products may benefit from promotion of honey bee products through education and advertising;

(6) It is necessary to stabilize the Washington honey bee industry, to enlarge its markets, and increase the consumption of Washington honey bee industry products and services 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 a reasonable standard of living;

(7) Providing information to the public on the manner, cost, and expense of producing, and the care taken to produce and sell, honey bee industry products and services of the highest quality, the methods and care used in their preparation for market, and the methods of sale and distribution is in the public interest;

(8) It is necessary to protect the public by educating it on the various benefits of honey bee industry services, the food value of its products, and their industrial and medicinal uses. [1989 c 5 § 1.]

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

(1) "Affected person" means an apiarist, manufacturer, processor, first handler, broker, or volunteer who shall pay to the commission the minimum assessments required in RCW 15.62.140.

(2) "Apiarist" means any person, firm, partnership, association, or corporation who owns, operates, manages, or brokers ten or more honey bee (*Apis mellifera*) colonies or any volunteer participant having less than ten colonies in the state of Washington.

(3) "Bee colony" means a natural group of honey bees containing seven thousand or more workers and one or more queens, housed in a man-made hive with movable frames, and operated as a beekeeping unit.

(4) "Broker" means any person other than an apiarist who, for a fee, places or sets twenty-five or more bee colonies for pollination or buys and sells one thousand dollars or more per year of industry products he or she does not produce or manufacture.

(5) "Commission" means the Washington state honey bee industry commission or its authorized agents.

(6) "Department" means the department of agriculture.

(7) "Director" means the director of the department of agriculture.

(8) "First handler" means any person in Washington who imports industry products or bee supplies and equipment into Washington for processing, packing, or sale in the state of Washington.

(9) "Industry products" means queen bees, packaged bees, and items which are made by bees including, but not limited to, honey, pollen, bees wax, and propolis and items manufactured for use in the honey bee industry as enumerated under "manufacturer" in this section.

(10) "Manufacturer" means any person making bee supplies and equipment such as: Supers (hive boxes), frames, bees wax foundation, smokers, extractors, bee veils,

pollen traps, queen rearing equipment, bee cages and packages, queen excluders, and other bee supplies used in the honey bee industry.

(11) "Person" means any individual, firm, partnership, or corporation engaged in the apiculture industry.

(12) "Processor" means any person processing, selling, marketing, or distributing bee industry products.

(13) "Retail sales" means those sales made directly to consumers whether apiarists, brokers, or persons involved in the apiculture industry, or the public. [1989 c 5 § 2.]

15.62.030 Commission established by referendum.

The Washington state honey bee commission shall be established following approval of a referendum by a majority of the affected apiarists and brokers, as set forth in RCW 15.62.140(4) for assessment increases. [1989 c 5 § 3.]

15.62.040 Powers and duties of commission. The commission shall have the following powers and duties:

(1) To elect a chairperson and other officers as it deems advisable;

(2) To promulgate rules and regulations under the administrative procedure act, chapter 34.05 RCW, and RCW 15.04.200 as necessary to effectuate the purpose and policies of this chapter;

(3) To administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to fulfill the purpose thereof;

(4) To employ and discharge advertising agents, attorneys as permitted by the attorney general, agents, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(5) To establish offices, hire employees who shall be exempt from chapter 41.06 RCW, incur expenses which shall not exceed revenues, enter into contracts, and create such liabilities as are reasonable and proper for the administration of this chapter;

(6) To investigate and refer violations of this chapter to local prosecuting attorneys or special prosecutors appointed by the commission and the local prosecuting attorney;

(7) To contract for scientific research designed to improve production, pollination, management, quality, processing, and distribution and to develop and discover uses for products of the honey bee industry;

(8) To make in its name advertising contracts and other agreements necessary to promote the industry and bee products and services in state, national, and foreign markets;

(9) To keep accurate records of all commission dealings, which shall be open to public inspection and audit by authorized state agencies;

(10) To contract for research to develop more efficient methods of promoting the honey bee industry and its products and services;

(11) To develop and conduct educational programs for the benefit of industry and to inform the public regarding Washington's honey bee industry;

(12) To enter into contracts and agreements for purposes consistent with this chapter;

(13) To publish at least an annual report of its activities and financial status subject to audit by the state auditor;

(14) To establish an operating monetary reserve and carry over to subsequent fiscal periods any excess funds in the reserve: PROVIDED, That the reserve funds shall not exceed one fiscal period's budget. The reserve funds shall only be used to defray any expenses authorized under this chapter;

(15) To audit any affected person's records as described in RCW 15.62.200; and

(16) To consider the assessment of honey or manufactured bee supplies produced or sold in Washington. Assessments shall only be levied after a referendum is conducted and approved by a majority vote, as set forth in RCW 15.62.140(4), of persons engaged in the honey bee industry of Washington. [1989 c 5 § 13.]

15.62.050 Commission compositions—Eleven positions. The commission shall consist of the following members:

(1) Apiarist position one shall represent area one, which includes the counties of Whatcom, San Juan[,] Island, Skagit, Snohomish, and King; and

(2) Apiarist position two shall represent area two, which includes the counties of Pierce, Kitsap, Clallam, Jefferson, Grays Harbor, Mason, Thurston, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, [and] Skamania; and

(3) Apiarist positions three and four shall represent area three, which includes the counties of Kittitas, Yakima, Klickitat, and Benton; and

(4) Apiarist position five shall represent area four, which includes the counties of Okanogan, Chelan, and Douglas; and

(5) Apiarist position six shall represent area five, which includes the counties of Grant, Adams, Franklin, Walla Walla, Columbia, Garfield, Asotin, and Whitman; and

(6) Apiarist position seven shall represent area six, which includes the counties of Spokane, Lincoln, Ferry, Stevens, and Pend Oreille; [and]

(7) Position eight, appointed by the director, shall be a manufacturer or broker of industry products representing Washington residents engaged in the apiculture industry; and

(8) Position nine, appointed by the director, shall be a processor or first handler representing residents engaged in Washington's honey bee industry; and

(9) Position ten shall be the director of the Washington state department of agriculture, who shall be a nonvoting ex officio member; and

(10) Position eleven, appointed by the director, may be an affected person representing out-of-state interests who are not Washington residents but are active as affected persons in Washington. [1989 c 5 § 4.]

15.62.060 Position qualifications. (1) Commission positions one through seven shall be filled by persons who meet the following requirements:

(a) Resident of this state;

(b) Resident of the area they represent; and

(c) Actually engaged in owning, operating, or as a broker of bee colonies for the five years immediately preceding their election.

(2) Commission positions eight and nine shall be filled by persons who meet the following requirements:

(a) Resident of this state; and
 (b) Actually engaged as a manufacturer, broker of industry products, processor, or first handler for the five years immediately preceding their election.

(3) Commission members shall be immediately disqualified if they no longer meet the qualifications during their terms of office. The vacancy on the commission shall be filled according to *section 38 of this act.

(4) Position eleven shall be filled by a person who qualifies under subsection (1)(c) or (2)(b) of this section and is not a resident of Washington. [1989 c 5 § 5.]

***Reviser's note:** The reference to "section 38 of this act" is incorrect. Apparently a reference to "section 6 of this act," codified as RCW 15.62.070, was intended.

15.62.070 Terms of office—Vacancies. (1) The regular terms of office of each elected member of the commission shall be three years, except that the term of office for the initial members shall be as follows:

- (a) Positions for areas one, four, and seven - one year.
- (b) Positions for areas two, five, and eight - two years.
- (c) Positions for areas three, six, and nine - three years.
- (d) If filled, position for area eleven - three years.

(2) No elected member of the board may serve more than two full consecutive three-year terms.

(3) Terms of office shall end on August 31 of the last year of the elected or appointed term.

(4) Any vacancies on the commission shall be filled by a person meeting the qualifications established in *section 37 of this act appointed by the other voting members of the commission. The appointee shall hold office for the remainder of the term, at which time an election for that position shall be conducted. [1989 c 5 § 6.]

***Reviser's note:** The reference to "section 37 of this act" is incorrect. Apparently a reference to "section 5 of this act," codified as RCW 15.62.060, was intended.

15.62.080 Apiarist members—Election. (1) Apiarist members of the commission shall be nominated and elected by the apiarists within the district they are to represent in the year in which a member's term expires. The candidate receiving the largest number of votes cast shall be elected. The election shall be by secret mail ballot and shall be conducted by the director, who shall be reimbursed for actual expenses of conducting the election by the commission.

(2) The director shall provide forms for the nomination of candidates to each affected person. The nomination form shall provide for the name of the person being nominated and the names of five persons supporting the nomination.

(3) The persons nominating the candidate shall affirm that the candidate meets the qualifications and is willing to serve by signing the nomination form.

(4) The nomination forms shall be returned to the director by June 30 of the election year, and the director shall not accept any nomination postmarked later than midnight of that date.

(5) In the event no nomination is submitted for a position, the director shall nominate at least two, but no more than three, qualified persons and place their names on the election ballot as nominees. Any qualified person may

be elected by write-in ballot, even though his or her name was not placed in nomination.

(6) Ballots for electing commission members shall be mailed by the director to all apiarists and brokers in areas where elections are to be held no later than July 15. Ballots, to be valid, shall be returned to the director postmarked no later than July 31. Elected persons shall take office effective September 1 of the year elected except initial elections shall take place within one hundred twenty days after July 23, 1989. [1989 c 5 § 7.]

15.62.090 Notice, elections, referenda—Lists of apiarists, manufacturers, processors, and first handlers.

(1)(a) The director shall cause a list to be prepared of all apiarists, as defined in RCW 15.62.020, from the list of apiarists registered with the department under RCW 15.60.030. A qualified person may, at any time, have his or her name placed on the list by registering with the department.

(b) The director shall cause a list to be prepared of manufacturers, processors, and first handlers. The list shall be prepared from any information the director has at hand or may readily obtain. A qualified person may, at any time, have his or her name placed on the list by notifying the department and providing such information as the department deems necessary to determine whether the person qualifies as a manufacturer, processor, or first handler under RCW 15.62.020.

(c) For all purposes of giving notice and conducting elections or referenda, the lists the director has on hand under this section, corrected up to the day next preceding the date for issuing notices or ballots, are, for purposes of this chapter, deemed to be the lists of all persons entitled to notice or to assent or dissent or to vote.

(2) Any person may file his or her name and address with the commission for the purpose of receiving notices regarding the activities of the commission. Persons who are not Washington residents but are active as affected persons in this state and who wish to be considered for appointment to position eleven on the commission may file their names with the director. A person desiring such consideration must supply such information as the director deems appropriate. [1989 c 5 § 8.]

15.62.100 Costs of elections and referendums—Reimbursement. The commission shall reimburse the director for the actual costs incurred in conducting the elections and referendums, and acquiring lists of affected persons. [1989 c 5 § 9.]

15.62.110 Quorum—Travel expenses. (1) A majority of the commission members shall constitute a quorum for the transaction of all business of the commission.

(2) Members of the commission shall be reimbursed for travel expenses, as prescribed by the commission, for each day spent in attendance at, or traveling to and from, commission meetings or when conducting authorized commission business. [1989 c 5 § 10.]

15.62.120 Certified copies of commission's proceedings, records, and acts—Admissible in court. Copies of the proceedings, records, and acts of the commission, when

certified by the secretary, shall be admissible in any court and be evidence of the truth of the statements therein contained. [1989 c 5 § 11.]

15.62.130 Commission officers—Members' fidelity bonds. The commission may elect an executive secretary who is not a member and fix his or her compensation and may appoint a treasurer who shall sign all vouchers and receipts for moneys received by the commission. The commission shall purchase for each of its members a fidelity bond executed by a surety company authorized to do business in the state, in favor of the state and the commission, in a sum to be determined by the commission. [1989 c 5 § 12.]

15.62.140 Assessments—Minimum—Increase. (1) The commission shall collect annual assessments as follows:

(a) Twenty-five cents for each colony operated by an apiarist or broker in Washington at any time in a calendar year. Each colony shall be assessed only once per calendar year. There shall be a minimum assessment of ten dollars.

(b) The sale of a business enterprise by an apiarist or broker shall not be assessed.

The provisions of this subsection (1) are effective only if the referendum required by RCW 15.62.030 on the creation of the commission is adopted.

(2) Subject to approval by referendum, the commission shall have the power and duty to increase the amount of the assessments as necessary to fulfill the purposes of this chapter.

(3) In determining the necessity for an assessment increase, the commission shall consider:

(a) The purpose of the commission;

(b) The extent and probable cost of required research, promotion, and advertising;

(c) The extent of public convenience, interest, and necessity; and

(d) The expected revenue from the increased assessment.

(4) The increase in assessment shall not become effective until approved by a majority of the affected persons voting in a referendum conducted by the commission. The referendum must be approved by:

(a) Either fifty-one percent of the apiarists and brokers representing sixty-six percent of the colonies registered in Washington in the twelve months preceding voting; or

(b) Sixty-six percent of the apiarists and brokers representing fifty-one percent of the colonies registered in Washington in the twelve months preceding voting; and

(c) Either fifty-one percent of manufacturers, processors, and first handlers representing sixty-six percent of industry products sold in Washington by its residents; or

(d) Sixty-six percent of manufacturers, processors, and first handlers representing fifty-one percent of industry products sold in Washington by its residents. [1989 c 5 § 14.]

15.62.150 Assessments—Collection—Deposit in local fund—Gifts, grants, and endowments—Failure to remit assessment. (1) All assessments shall be collected by the

commission on a quarterly basis or as otherwise determined by the commission.

(2) The commission shall create a local fund in a local financial institution approved by the director and shall deposit therein, each day, all moneys received by the commission except an amount for petty cash as fixed by commission regulations. Moneys in the fund shall only be expended for the purposes of this chapter. Moneys in the fund are not subject to appropriation.

(3) The commission fund is authorized to receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(4) If an affected person fails to remit any assessment, such assessment plus interest at the rate of one percent per month from the due date shall constitute a personal debt of the person assessed or who otherwise owes the assessment and shall be due and payable within thirty days from the date it becomes first due the commission. In the event of failure of the person to pay due and payable assessments, the commission may bring civil action against the person in a state court of competent jurisdiction for collection thereof, together with any reasonable costs including attorneys' fees. The action shall be tried and judgment rendered as in any other cause of action for debt due and payable. This provision is in addition to the penalty section contained in RCW 15.62.220. [1989 c 5 § 15.]

15.62.160 Assessment error—Refund. A person shall be entitled to a refund of assessed money held by the commission fund when it has been determined by the commission that the affected person was assessed and made payment in error. [1989 c 5 § 16.]

15.62.170 Recordkeeping. (1) Each apiarist and broker shall keep accurate records of the number of colonies owned or operated during each calendar year.

(2) Each manufacturer shall keep accurate records of gross sales of industry products or manufactured goods sold in the state of Washington.

(3) Each processor shall keep accurate records of the pounds of honey sold in the state of Washington.

(4) Each first-handler shall keep accurate records of the industry products sold in the state of Washington.

(5) The records shall contain information required by the commission and shall be preserved for a period of five years.

(6) The records shall be made available for audit upon request of the commission or its agent, as authorized in RCW 15.62.040 and 15.62.200. [1989 c 5 § 17.]

15.62.180 Reporting. Each affected person shall, as required, file with the commission a return under oath on forms to be furnished by the commission, stating the information requested by the commission regarding the ownership, handling, processing, manufacturing, delivering, shipping, sale, and brokering of various honey bee industry products and activities as defined in RCW 15.62.020. The

report shall cover the period or periods of time prescribed by the commission. [1989 c 5 § 18.]

15.62.190 Promotional printing and literature—Exempt from public printing requirements. The restrictive provisions of chapter 43.78 RCW shall not apply to promotional printing and literature for the Washington state honey bee commission. [1989 c 5 § 19.]

Public printer—Public printing: Chapter 43.78 RCW.

15.62.200 Audit of records of affected persons. The commission through its agents may audit the records of any affected person for the purpose of enforcing the provisions of this chapter. The commission must first notify the affected person of their intention to audit and may request supporting documents of the affected person regarding reports submitted on commission forms under RCW 15.62.180. [1989 c 5 § 20.]

15.62.210 Nonliability of state—Salaries, expenses, and liabilities. 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 salaries, expenses, and liabilities incurred by persons employed or contracting under this chapter for the commission shall be limited to, and payable only from, the funds collected hereunder. [1989 c 5 § 21.]

15.62.220 Violations—Misdemeanor. Any person who violates or aids in the violation of any provision of this chapter or any rule or regulation of the commission shall be guilty of a misdemeanor. [1989 c 5 § 22.]

15.62.230 Prosecutions—Superior court jurisdiction—Equitable remedies. (1) 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 or her principal place of business.

(2) The commission is hereby vested with the authority to utilize the services of the local prosecuting attorneys or special prosecutors as agreed upon by the commission and the local prosecutor for purposes of carrying out the prosecution of cases brought under this chapter.

(3) 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 enjoin and restrain violations thereof. [1989 c 5 § 23.]

15.62.300 Termination, suspension, or continuance of commission. In the seventh year following the inception of the commission, a referendum shall be conducted by the department of agriculture to determine if the commission is still desired by the beekeeping industry in Washington. The commission shall continue if the director finds that affected apiarists and brokers voting in a referendum conducted as for an assessment increase in RCW 15.62.140(4) voted in favor of such continuance, otherwise it shall be terminated or suspended as in RCW 15.62.310. [1989 c 5 § 25.]

15.62.310 Termination or suspension of commission. The commission shall be terminated or suspended if the director finds that apiarists and brokers voting in a referendum conducted as for an assessment increase in RCW 15.62.140(4) voted in favor of such termination or suspension. A referendum may be called by a majority of the commission or by twenty percent of the resident affected persons representing twenty percent of the colonies and industry products sold in Washington.

Any moneys in the treasury at the time of an affirmative termination or suspension vote shall first be used to effect all acts associated with the termination or suspension procedures and liquidation of the affairs of the commission.

Any residual funds not necessary to defray the expenses of termination or suspension of the commission shall be turned over to Washington State University to be used in conducting research on the honey bee *Apis mellifera*. [1989 c 5 § 26.]

15.62.900 Liberal construction. This chapter shall be liberally construed to effectuate the policies and purpose set forth herein. [1989 c 5 § 24.]

15.62.910 Severability—1989 c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 5 § 27.]

Chapter 15.64

FARM MARKETING

Sections

- 15.64.010 Director's duties and powers.
- 15.64.030 Studies of farm marketing problems—Rules.
- 15.64.040 Use of funds for studies—Joint studies with other agencies.

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 gover-

nor 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.]

15.64.030 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— COMMODITY BOARDS

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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
15.66.185.*

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 llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including, but not limited to, products qualifying as organic food products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, either in its natural or processed state, including bees and honey and Christmas trees 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 subtypes 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 stored in frozen condition or 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. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him. "Handler" does not mean a common carrier used to transport an agricultural commodity. "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. [1993 c 80 § 2; 1986 c 203 § 15. Prior: 1985 c 457 § 13; 1985 c 261 § 1; 1975 1st ex.s. c 7 § 2; 1961 c 256 § 2.]

Severability—1986 c 203: See note following RCW 15.17.245.

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.]

15.65.055 Regulatory authority on the production of rapeseed by variety and location. The legislature finds that the production of marketable rapeseed within this state is in the interest of the public welfare. The legislature further finds that the production of incompatible varieties of rapeseed in close geographical proximity adversely affects the purity and marketability of rapeseed, and that it is in the public interest to establish geographical districts and buffer zones wherein the production of rapeseed may be restricted by variety.

For the purpose of rapeseed production in the state of Washington, the director of the department of agriculture shall have the regulatory authority on the production of rapeseed by variety and geographic location until such time as a rapeseed commodity commission is formulated. Once formed, the rapeseed commodity commission shall assume the regulatory authority on the production of rapeseed by variety and geographic location in the state of Washington. [1986 c 203 § 21.]

Severability—1986 c 203: See note following RCW 15.17.245.

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 two days in one or more newspapers of general circulation 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 within the affected area 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. [1987 c 393 § 5; 1985 c 261 § 2; 1979 c 154 § 4; 1961 c 256 § 7.]

Severability—1979 c 154: See note following RCW 15.49.330.

15.65.080 Hearings public—Oaths—Record—Administrative law judge, 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. An administrative law judge appointed under chapter 34.12 RCW may preside over 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 or the administrative law judge shall receive evidence with respect to all of the matters and things upon which he must make a finding. [1981 c 67 § 18; 1961 c 256 § 8.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

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 sum-

moned 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 within the affected area 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. [1985 c 261 § 3; 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 within the affected area 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 produc-

tion 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: PROVIDED, That producers shall be deemed to have assented to or approved a proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent or approve the proposed order in a referendum. [1985 c 261 § 4; 1975 1st ex.s. c 7 § 3; 1961 c 256 § 14.]

15.65.150 Minimum requirements prerequisite to order or amendment assessing handlers—Assent by producers. Any marketing order or amendment thereto directly assessing 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. [1985 c 261 § 5; 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 within the affected area 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 within the affected area and the requirements of assent or approval shall be held to be complied with if of the total number of such 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) as now or hereafter amended: PROVIDED, That thirty percent of the affected producers within the affected area producing thirty percent by volume of the affected commodity have been represented in a referendum to determine assent or approval of the issuance of a marketing order: 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 within the affected area producing fifty-one percent by volume of the affected commodity or fifty-one percent by number of such 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. [1985 c 261 § 6; 1975 1st ex.s. c 7 § 4; 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 of a notice for one day in a newspaper of general circulation in the affected area. The notice shall state 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. [1987 c 393 § 6; 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 within the affected area 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. [1985 c 261 § 7; 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 within the affected area, 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 within the affected area 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 within the affected area 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. [1985 c 261 § 8; 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, including the authority to borrow money and incur indebtedness, 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. [1977 ex.s. c 26 § 4; 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 within the affected area 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. Nomina-

tions 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.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers or handlers. The notice shall call for nominations in accordance with the marketing order and shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

When only one nominee is nominated for any position on the board the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected. [1987 c 393 § 7; 1985 c 261 § 9; 1975 1st ex.s. c 7 § 5; 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 within the affected area, 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 within the affected area 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 within the affected area, 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 within the affected area 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. [1985 c 261 § 10; 1961 c 256 § 26.]

15.65.270 Vacancies, quorum, compensation, travel 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. Each member of the board shall be

compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 16; 1975-'76 2nd ex.s. c 34 § 19; 1961 c 256 § 27.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

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 within the affected area 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. [1985 c 261 § 11; 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 stored in frozen condition or sold or marketed or delivered for sale or marketing or distribution or processing or consumption within such marketing area. [1985 c 261 § 12; 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.]

15.65.375 Agreement and order provisions—Participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by *RCW 15.58.030(1) or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity board funds for this purpose. [1988 c 54 § 1.]

*Reviser's note: Due to the 1989 c 380 § 1 amendment to RCW 15.58.030, "pesticide" is now defined in subsection (29) of that section.

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. 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 affected unit stored in frozen condition or 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, or stored in frozen condition, 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 or as a percentage of the receipt price at the first point of sale. 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 stored in frozen condition or sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies. [1987 c 393 § 9; 1985 c 261 § 13; 1961 c 256 § 39.]

15.65.400 Rate of assessment. In every marketing agreement and order the director shall prescribe the rate of such assessment. Such assessment shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. 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 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. [1987 c 393 § 10; 1961 c 256 § 40.]

15.65.405 Annual assessment in excess of the fiscal growth factor under chapter 43.135 RCW—Hop commodity board—Mint commodity board. The hop commodity board may raise the rate of annual assessment in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of two dollars and fifty cents per affected unit in effect under chapter 16-532 WAC on July 1, 1995, to three dollars per affected unit. For this purpose, the affected unit is two hundred pounds net of hops or the amount of lupulin, extract, or oil produced from two hundred pounds net of hops.

The mint commodity board may raise the rate of annual assessment in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of three and one-half cents per affected unit in effect under chapter 16-540 WAC on July 1, 1995, to five cents per affected unit. For this purpose, the affected unit is one pound of mint oil as distilled from mint plants grown by an affected producer and as weighed by the first purchaser.

The assessment limits established by this section are set solely to provide prior legislative authority for the purposes of RCW 43.135.055 and may not be construed as providing a limitation on the authority of either commodity board to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under the authority of this section shall be made in compliance with the procedural requirements established by this chapter for altering or amending such assessments. [1995 c 109 § 1.]

Effective date—1995 c 109: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 109 § 3.]

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:

(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; or

(4) Require in the case of assessments against affected units stored in frozen condition:

(a) Cold storage facilities storing such commodity to file information and reports with the department or affected commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(b) That such commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

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 by the producer or first handler and the receipt issued. [1985 c 261 § 14; 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 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. [1985 c 261 § 15; 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 "mar-

keting 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—Deposits. The director or his or her designee shall designate financial institutions which are qualified public depositories under chapter 39.58 RCW as depository or depositories of money received for the marketing act revolving fund. All moneys received by the director or his or her 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 in a designated depository. [1987 c 393 § 8; 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. 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 every five years 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 or of a fiscal year determined by the director. 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. [1982 c 81 § 1; 1979 c 154 § 5; 1973 c 106 § 10; 1961 c 256 § 49.]

Severability—1979 c 154: See note following RCW 15.49.330.

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 Information and inspections required—Hearings—Confidentiality and disclosures. All parties to a marketing agreement, all persons subject to a marketing order, and all producers, dealers, and handlers of a commodity governed by the provisions of a marketing agreement or order shall severally from time to time, upon the request of the director, the director's designee, or the commodity board established under the marketing agreement or order, furnish such information and permit such inspections as the director, the director's designee, or the commodity board finds to be necessary to effectuate the declared policies of this chapter and the purposes of such agreement or order. Information and inspections may also be required by the director, the director's designee, or the commodity board 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, the director's designee, or the commodity board. The director, the director's designee, or a designee of the commodity board is hereby authorized to inspect crops and examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control:

(1) Of any such party to such marketing agreement or, any person subject to any 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 the director's 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 the director's designee pursuant to this section

shall be kept confidential by all officers and employees of the director or the director's designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by the director 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 the director or the director's 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 the director's 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. [1989 c 354 § 29; 1961 c 256 § 51.]

Severability—1989 c 354: See note following RCW 15.36.012.

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 34.05 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 15.24.010-15.24.210 inclusive), to the soft tree fruits commission (RCW 15.28.010-15.28.310 inclusive), or to dairy products commission (RCW 15.44.010-15.44.180 inclusive), or to wheat commission (*RCW 15.63.010-15.63.920 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 RCW); 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.]

***Reviser's note:** RCW 15.63.010 through 15.63.920 were repealed by 1998 c 11 § 1.

15.65.630 Application of chapter to canners, freezers, pressers, dehydrators of fruit or vegetables. Except for the provisions of this chapter relating to levying, collecting, and paying assessments, nothing in this chapter shall apply to any person engaged in the canning, freezing, pressing, or dehydrating of fresh fruit or vegetables. [1985 c 261 § 16; 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 Savings—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—COMMODITY COMMISSIONS

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 15.66.185.

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 llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including, but not limited to, products qualifying as organic food products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, within its natural or processed state, including bees and honey and Christmas trees 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. For the purposes of RCW 15.66.060, 15.66.090, and 15.66.120, as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(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, 19.77, 19.80, 19.84, 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. [1993 c 80 § 3; 1986 c 203 § 16; 1985 c 457 § 14; 1983 c 288 § 6; 1982 c 35 § 180; 1975 1st ex.s. c 7 § 6; 1961 c 11 § 15.66.010. Prior: 1955 c 191 § 1.]

Severability—1986 c 203: See note following RCW 15.17.245.

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

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.]

15.66.025 Regulatory authority on the production of rapeseed by variety and location. For the purpose of rapeseed production in the state of Washington, the director of the department of agriculture shall have the regulatory authority on the production of rapeseed by variety and geographical location until such time as a rapeseed commodity commission is formulated. Once formed, the rapeseed commodity commission shall assume the regulatory authority on the production of rapeseed by variety and geographic location in the state of Washington. [1986 c 203 § 22.]

Severability—1986 c 203: See note following RCW 15.17.245.

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 and their individual production, the director shall publish a notice to producers of the commodity to be affected requiring them to file with the director a report showing the producer's name, mailing address, and the yearly average quantity of

the affected commodity produced by him in the three years preceding the date of the notice or in such lesser time as the producer has produced the commodity in question. Such information as to production may also be accepted from other valid sources if readily available. 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 any purpose by such commission carry out the above stated mandate to the director for establishing a list of producers and their individual production, 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. [1975 1st ex.s. c 7 § 7; 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 issuance or termination 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 producers shall be deemed to have assented to the proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying 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. [1975 1st ex.s. c 7 § 8; 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.

When only one nominee is nominated for any position on the commission, the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected. [1975 1st ex.s. c 7 § 9; 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.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 17; 1975-'76 2nd ex.s. c 34 § 20; 1975 1st ex.s. c 7 § 10; 1972 ex.s. c 112 § 3; 1961 c 11 § 15.66.130. Prior: 1955 c 191 § 13.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

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 the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) Such other powers and duties that are necessary to carry out the purposes of this chapter. [1985 c 261 § 20; 1982 c 81 § 2; 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 or as a percentage of the net unit price at the time of sale. The total amount of such annual assessment to be paid by all affected producers of such commodity shall not exceed 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 or percentage 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 or percentage 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.

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. [1981 c 297 § 40; 1979 ex.s. c 93 § 1; 1961 c 11 § 15.66.150. Prior: 1957 c 133 § 1; 1955 c 191 § 15.]

Severability—1981 c 297: See note following RCW 15.36.201.

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.]

15.66.185 Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks. Any funds of any agricultural commodity commission may be invested in savings or time deposits in banks, trust companies and mutual savings banks which are doing business in this state, up to the amount of insurance afforded such accounts by the Federal Deposit Insurance Corporation. This section shall apply to all funds which may be lawfully so invested, which in the judgment of any agricultural commodity commission are not required for immediate expenditure. The authority granted by this section is not exclusive and shall be construed to be cumulative and in addition to other authority provided by law for the investment of such funds. [1967 ex.s. c 54 § 2. Formerly RCW 30.04.370.]

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.]

15.66.245 Marketing agreement or order— Authority for participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity commission, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by *RCW 15.58.030(1) or any agricultural chemical which is of use or potential use in

producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity commission funds for this purpose. [1988 c 54 § 2.]

*Reviser's note: Due to the 1989 c 380 § 1 amendment to RCW 15.58.030, "pesticide" is now defined in subsection (29) of that section.

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 15.69

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 15.74

HARDWOODS COMMISSION

Sections

15.74.005	Legislative purpose.
15.74.010	Commission created.
15.74.020	Commission authority.
15.74.030	Commission management.
15.74.040	Financial requirements.
15.74.050	Obligations, liabilities, and claims.
15.74.060	Assessments—Generally.
15.74.070	Assessments—Failure to pay.
15.74.900	Severability—1990 c 142.

15.74.005 Legislative purpose. The legislature recognizes that the economic base of the state of Washington is directly tied to the development and management of forest industries and that efforts to enhance and promote the recognition and expansion of the hardwoods industry should be coordinated between state and federal agencies, the forest products industry, commissions, institutions of higher education, and other entities. The legislature further recognizes that the development of hardwood forests and hardwood products will require multispecies, sustained-yield management plans for industrial and nonindustrial timber tracts, the development of products and markets for all grades of

hardwoods, a stable and predictable tax program for new and existing firms and financial assistance for the attraction and expansion of new and existing hardwood processing facilities. The legislature also recognizes that the welfare of the citizens of the state of Washington require, as a public purpose, a continuing effort toward the full utilization of hardwood forests and the hardwood products industry. [1990 c 142 § 1.]

15.74.010 Commission created. In recognition of the findings and purposes in RCW 15.74.005, there is created the Washington hardwoods commission, which is created solely for the purposes set forth in this chapter. The commission shall be comprised of seven members. All members shall be members of the hardwood industry. All members shall initially be appointed by the governor and shall be appointed to staggered terms. Three members shall be appointed for a two-year term, two members to a three-year term, and two members to a four-year term. The hardwoods commission shall, by January 1, 1991, develop a method of electing board members to replace the appointed members. Each board member shall serve until the election of his or her successor. Five voting members of the commission constitute a quorum for the transaction of any business of the commission. Each member of the commission shall be a resident of the state and over the age of twenty-one. [1990 c 142 § 2.]

15.74.020 Commission authority. The commission shall have the power, duty, and responsibility to assist in the retention, expansion, and attraction of hardwood-related industries by creating a climate for development and support of the industry. The commission shall coordinate efforts to enhance and promote the expansion of the forest industry among state and federal agencies, industry organizations, and institutions of higher education. The commission shall have the power and duty to develop products and markets for various species and grades of hardwoods, and to study and recommend a tax program that will attract new firms and promote stability for existing firms. The commission shall also have as its duty the development of an enhancement and protection program that will reduce waste and respect environmental sensitivity. The commission will develop financial assistance programs from public and private moneys for attraction and expansion of new and existing primary, secondary, and tertiary processing facilities. It is also appropriate that the commission utilize recognized experts in educational institutions, public and private foundations, and agencies of the state, to facilitate research into economic development, hardwood silviculture, woodland management, and the development of new products. The commission will also work cooperatively with the department of natural resources in the development of best management practices for hardwood resources. [1990 c 142 § 3.]

15.74.030 Commission management. The commission shall have the power to elect a chair and such officers as the commission deems necessary and advisable. The commission shall elect a treasurer who shall be responsible for all receipts and disbursements by the commission. The

treasurer's faithful discharge of duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its governance, which shall provide for the holding of an annual meeting for the election of officers and the transaction of other business and for such other meetings as the commission may direct. The commission shall do all things reasonably necessary to effect the purposes of this chapter. The commission shall have no legislative power. The commission may employ and discharge managers, secretaries, agents, attorneys, and other employees or staff, and may engage the services of independent contractors, prescribe their duties, and fix their compensation. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [1991 c 67 § 1; 1990 c 142 § 4.]

15.74.040 Financial requirements. The commission shall maintain an account with one or more public depositories, and may deposit moneys in the depository and expend moneys for purposes authorized by this chapter in the form of drafts made by the commission. The commission shall keep accurate records of all receipts, disbursements, and other financial transactions in accordance with generally accepted principles of accounting, available for audit by the state auditor. [1990 c 142 § 5.]

15.74.050 Obligations, liabilities, and claims. 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 or her individual capacity. The members of the commission, including employees of the commission, shall not be held responsible in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principle, 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 members of the commission. [1990 c 142 § 6.]

15.74.060 Assessments—Generally. To provide for permanent funding of the Washington hardwoods commission, agricultural commodity assessments shall be levied by the commission on processors of hardwoods.

An assessment is hereby levied on hardwood processors operating within the state of Washington. The assessment categories shall be based on the hardwood processor's production per calendar quarter. The assessment shall be levied based upon the following schedule:

CATEGORY	QUARTERLY PRODUCTION (THOUSAND TONS)	QUARTERLY ASSESSMENT
1	5 to 7.5	\$ 150
2	7.5 to 15	\$ 300

3	15 to 25	\$ 600
4	25 to 35	\$ 900
5	35 to 45	\$ 1,200
6	45 to 62.5	\$ 1,500
7	62.5 to 82.5	\$ 2,250
8	82.5 to 125	\$ 3,000
9	125 to 175	\$ 4,500
10	175 to 250	\$ 6,000
11	250 to 350	\$ 9,000
12	350 to 450	\$12,000
13	450 to 625	\$15,000
14	625 to 875	\$22,500
15	875 to 1125	\$30,000
16	Over 1125	\$35,000

The commission may develop by rule formulas for converting other units of measure to thousands of tons of production for determining the appropriate production category. The assessment shall be calculated based upon calendar quarters with the first assessment period beginning July 1, 1991. [1991 c 67 § 3; 1990 c 142 § 7.]

15.74.070 Assessments—Failure to pay. Any due and payable assessment levied under this chapter in such specified amount as may be determined by the commission 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 commission the full amount of such assessment or such other sum on or before the date due, the commission 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 commission may bring a civil action against such person or persons in a 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. [1991 c 67 § 2.]

15.74.900 Severability—1990 c 142. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 142 § 9.]

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.
15.76.115	Fair fund—Created—Purpose.
15.76.120	Categories of fairs—Jurisdiction and organization.
15.76.130	Application for state allocation—Purposes—Form.
15.76.140	Eligibility requirements for state allocation—Temporary waiver.
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.]

15.76.115 Fair fund—Created—Purpose. The fair fund is created in the custody of the state treasury. All moneys received by the department of agriculture for the purposes of this fund and from RCW 67.16.105(4) shall be deposited into the fund. Expenditures from the fund may be used only for assisting fairs in the manner provided in this chapter. Only the director of agriculture or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [1998 c 345 § 2.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

15.76.120 Categories of fairs—Jurisdiction and organization. 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 or the office of the superintendent of public instruction, serving three or more counties, and having for their purpose the education and training of rural youth in matters of rural living. [1993 c 163 § 1; 1991 c 238 § 74; 1961 c 61 § 3.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

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—Temporary waiver. (1) 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.

(2) Beginning January 1, 1994, and until June 30, 1997, the director may waive this requirement for an agricultural fair that through itself or its predecessor sponsoring organization has successfully operated at least two years as a county fair, has received a funding allocation as a county fair under chapter 374, Laws of 1995 for those two years, and that reorganizes as an area fair. [1995 c 374 § 71; 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 be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses, in accordance with RCW 43.03.050 and 43.03.060 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. [1984 c 287 § 18; 1975-'76 2nd ex.s. c 34 § 21; 1975 1st ex.s. c 7 § 11; 1961 c 61 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

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

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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 34.05 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 prose-

cuted 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 annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1991 c 109 § 7; 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 the expiration date, 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. The 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 or her prior license. [1991 c 109 § 8; 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 annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1991 c 109 § 9; 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—Annual renewal. 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 a fee of five dollars, and such fee shall accompany the applicant's application for a weighmaster's license. The seal shall be retained by the weighmaster upon payment of an annual renewal fee of five dollars, and the fee shall accompany the annual renewal application for a weighmaster's license. Any replacement seal needed shall be procured from the director upon payment to the department of the cost for such replacement. An impression seal shall be used only at the scale to which it is assigned, and remains the property of the state and shall be returned forthwith to the director upon the termination, suspension, or revocation of the weighmaster's license. [1983 c 95 § 6; 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 34.05 RCW (Administrative Procedure Act) concerning adjudicative proceedings. [1989 c 175 § 52; 1969 ex.s. c 100 § 30.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 34.05 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 preseal 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.]

15.80.660 Collected moneys—Deposit. All moneys collected under this chapter shall be placed in the weights and measures account created in RCW 19.94.185. [1995 c 355 § 25.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

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 15.83

AGRICULTURAL MARKETING AND FAIR PRACTICES

Sections

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15.83.005 Intent. Agricultural products are produced by many individual farmers and ranchers located throughout the state. The efficient production and marketing of agricultural products by farmers, ranchers, and handlers is of vital concern to the welfare and general economy of the state. It is the purpose of this chapter to establish standards of fair practices required of handlers, producers, and associations of producers, with respect to certain agricultural commodities, to establish the mutual obligation of handlers and accredited associations of producers to negotiate relative to the production or marketing of these agricultural commodities.

It is the intent of the legislature that a workable process be developed through which a fair price and other contract terms can be arrived at through negotiations between processors of agricultural products and an accredited association of producers, and that in developing rules and administering this chapter the director of agriculture shall recognize this intent. [1989 c 355 § 1.]

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

(1) "Accredited association of producers" means an association of producers which is accredited by the director to be the exclusive negotiation agent for all producer members of the association within a negotiating unit.

(2) "Advance contract" means a contract for purchase and sale of a crop entered into before the crop becomes a growing crop and providing for delivery at or after the harvest of that crop.

(3) "Agricultural products" as used in this chapter means sweet corn and potatoes produced for sale from farms in this state.

(4) "Association of producers" means any association of producers of agricultural products engaged in marketing, negotiating for its members, shipping, or processing as defined in section 15(a) of the federal agriculture marketing act of 1929 or in section 1 of 42 Stat. 388.

(5) "Director" means the director of the department of agriculture.

(6) "Handler" means a processor or a person engaged in the business or practice of:

(a) Acquiring agricultural products from producers or associations of producers for use by a processor;

(b) Processing agricultural products received from producers or associations of producers, provided that a cooperative association owned by producers shall not be a handler except when contracting for crops from producers who are not members of the cooperative association;

(c) Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product for use by a processor; or

(d) Acting as an agent or broker for a handler in the performance of any function or act specified in (a), (b), or (c) of this subsection.

(7) "Negotiate" means meeting at reasonable times and for reasonable periods of time commencing at least sixty days before the normal planting date and concluding within thirty days of the normal planting date to make a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting with reason points brought up by either party with respect to the price, terms of sale, compensation for products produced under contract, or other terms relating to the production or sale of these products: PROVIDED, That neither party shall be required to disclose proprietary business or financial records or information.

(8) "Negotiating unit" means a negotiating unit approved by the director under RCW 15.83.020.

(9) "Person" means an individual, partnership, corporation, association, or any other entity.

(10) "Processor" means any person that purchases agricultural crops from a producer and cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner for eventual resale. A person who solely cleans, sorts, grades, and packages a farm product for sale without altering the natural condition of the product is not a processor. A person processing any portion of a crop is a processor.

(11) "Producer" means a person engaged in the production of agricultural products as a farmer or planter, including a grower or farmer furnishing inputs, production management, or facilities for growing or raising agricultural products. A producer who is also a handler shall be considered a handler under this chapter.

(12) "Qualified commodity" means agricultural products as defined in subsection (3) of this section. [1989 c 355 § 2.]

15.83.020 Negotiating agents—Association of producers—Accreditation. (1) An association of producers may file an application with the director:

(a) Requesting accreditation to serve as the exclusive negotiating agent on behalf of its producer members who are within a proposed negotiating unit with respect to any qualified commodity;

(b) Describing geographical boundaries of the proposed negotiating unit;

(c) Specifying the number of producers and the quantity of products included within the proposed negotiating unit;

(d) Specifying the number and location of the producers and the quantity of products represented by the association; and

(e) Supplying any other information required by the director.

(2) Within a reasonable time after receiving an application under subsection (1) of this section, the director shall approve or disapprove the application in accordance with this section.

(a) The director shall approve the initial application or renewal if the director determines that:

(i) The association is owned and controlled by producers under the charter documents or bylaws of the association;

(ii) The association has valid and binding contracts with its members empowering the association to sell or negotiate terms of sale of its members' products or to negotiate for compensation for products produced under contract by its members;

(iii) The association represents a sufficient percentage of producers or that its members produce a sufficient percentage of agricultural products to enable it to function as an effective agent for producers in negotiating with a given handler as defined in rules promulgated by the department. In making this finding, the director shall exclude any quantity of the agricultural products contracted by producers with producer-owned and controlled processing cooperatives with its members and any quantity of these products produced by handlers;

(iv) One of the association's functions is to act as principal or agent for its members in negotiations with handlers for prices and other terms of trade with respect to the production, sale, and marketing of the products of its

members, or for compensation for products produced by its members under contract; and

(v) Accreditation would not be contrary to the policies established in RCW 15.83.005.

(b) If the director does not approve the application under (a) of this subsection, then the association of producers may file an amended application with the director. The director, within a reasonable time, shall approve the amended application if it meets the requirements set out in (a) of this subsection.

(3) At the discretion of the director, or upon submission of a timely filed petition by an affected handler or an affected association of producers, the association of producers accredited under this section may be required by the director to renew the application for accreditation by providing the information required under subsection (1) of this section. [1989 c 355 § 3.]

15.83.030 Unlawful practices of handlers. It shall be unlawful for any handler to engage, or permit any employee or agent to engage, in the following practices:

(1) To refuse to negotiate with an association of producers accredited under RCW 15.83.020 with respect to any qualified commodity: PROVIDED, That the obligation to negotiate does not require either party to agree to a proposal, to make a concession, or to enter into a contract;

(2) To coerce any producer in the exercise of his or her right to contract with, join, refrain from contracting with or joining, belong to an association of producers, or refuse to deal with any producer because of the exercise of that producer's right to contract with, join, or belong to an association or because of that producer's promotion of legislation on behalf of an association of producers;

(3) To discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of that producer's membership in or contract with an association of producers or because of that producer's promotion of legislation on behalf of an association of producers;

(4) To coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler;

(5) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing or ceasing to belong to an association of producers;

(6) To make knowingly false reports about the finances, management, or activities of associations of producers or handlers; or

(7) To conspire, agree, or arrange with any other person to do, aid, or abet any act made unlawful by this chapter. [1989 c 355 § 4.]

15.83.040 Unlawful practices of association of producers or members. It shall be unlawful for any accredited association of producers or members of such association to engage, or permit any employee or agent to engage, in the following practices:

(1) To refuse to negotiate with a handler for any qualified commodity for which the association is accredited under RCW 15.83.020;

(2) To coerce or intimidate a handler to breach, cancel, or terminate a marketing contract with an individual producer, association of producers, or a member of an association;

(3) To knowingly make or circulate false reports about the finances, management, or activities of an association of producers or a handler;

(4) To coerce or intimidate a producer to enter into, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers;

(5) To conspire, agree, or arrange with any other person to do, aid, or abet any practice which is in violation of this chapter; or

(6) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing to contract or negotiate with a processor. [1989 c 355 § 5.]

15.83.050 Violations of chapter—Complaint. (1) If any person is charged with violating any provision of this chapter, the director shall investigate the charges. If, upon investigation, the director has reasonable cause to believe that the person charged has violated the provision, the director shall issue and cause to be served upon the person, a complaint stating the charges. A hearing on the charges shall be conducted in accordance with the provisions of chapter 34.05 RCW concerning contested cases.

(2) No complaint may be issued based upon any act occurring more than six months before the filing of the charge with the director. At the discretion of the director, any other person may be allowed to intervene in the proceeding and to present testimony and other evidence.

(3) If upon the preponderance of the evidence taken, the director is of the opinion that any person named in the complaint has engaged in or is engaging in any prohibited practice, the director shall make and enter findings of fact and shall issue and cause to be served on that person, an order requiring that person to cease and desist from the practice and to take affirmative action to further the policies of this chapter. The order may also require the person to make reports from time to time showing the extent of compliance with the order. If, upon the preponderance of the testimony and other evidence, the director determines that the person named in the complaint has not engaged in or is not engaging in any prohibited practice, the director shall make and enter findings of fact and an order dismissing the complaint. [1989 c 355 § 6.]

15.83.060 Director's authority—Recordkeeping—Cooperation. If required to carry out the objectives of this chapter, including the conduct of any investigations or hearing:

(1) The director shall require any person to:

- Establish and maintain records;
- Make reports; and
- Provide other information as may be reasonably required.

(2) Any person subject to the provisions of this chapter shall provide the information, records, and reports reasonably required by the director, or make such material available to the director for inspection and/or copying at reasonable times and places, except that no person shall be required under this

section to provide to the director proprietary business or financial records or information. [1989 c 355 § 7.]

15.83.070 Injury due to unlawful practices—Damages. A person injured in his or her business or property by reason of any violation of or conspiracy to violate RCW 15.83.030 or 15.83.040 may sue in a court of competent jurisdiction of the county in which such violation occurred without respect to the amount in controversy, and shall recover damages sustained, including reasonable attorneys' fees and costs of bringing the suit. Any action to enforce any cause of action under this section shall be forever barred unless commenced not later than two years after the cause of action accrues. [1989 c 355 § 8.]

15.83.080 Unlawful practices—Civil penalty. A person who violates RCW 15.83.030 or 15.83.040 may be assessed a civil penalty by the director of not more than five thousand dollars for each offense. No civil penalty may be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to chapter 34.05 RCW. In determining the amount of the penalty, the director shall consider the size of the business of the person charged, the penalty's affect [effect] on the person's ability to continue in business, and the gravity of the violation. If the director is unable to collect the civil penalty, the director shall refer the collection to the attorney general. [1989 c 355 § 9.]

15.83.090 Injunction. The director or any aggrieved producer, accredited association, or handler may bring an action to enjoin the 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. [1989 c 355 § 10.]

15.83.100 Rules. The director may promulgate such rules in accordance with chapter 34.05 RCW, and orders, as may be necessary to carry out this chapter. [1989 c 355 § 11.]

15.83.110 Advisory committee. The director shall establish an advisory committee consisting of the following persons: Six producers who are producers from names submitted by an association of producers, and six handlers subject to this chapter from names submitted by handlers. The advisory committee shall study and report on all issues related to this chapter. [1989 c 355 § 12.]

15.83.900 Short title. This chapter may be known and cited as the agricultural marketing and fair practices act. [1989 c 355 § 13.]

15.83.905 Severability—1989 c 355. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 355 § 14.]

Chapter 15.85

AQUACULTURE MARKETING

Sections

- 15.85.010 Legislative declaration.
- 15.85.020 Definitions.
- 15.85.030 Department principal agency for aquaculture marketing support.
- 15.85.040 Rules.
- 15.85.050 Program to assist marketing and promotion of aquaculture products.
- 15.85.060 Private sector cultured aquatic products—Identification—Rules.

Aquaculture disease control: Chapter 75.58 RCW.

15.85.010 Legislative declaration. The legislature declares that aquatic farming provides a consistent source of quality food, offers opportunities of new jobs, increased farm income stability, and improves balance of trade.

The legislature finds that many areas of the state of Washington are scientifically and biologically suitable for aquaculture development, and therefore the legislature encourages promotion of aquacultural activities, programs, and development with the same status as other agricultural activities, programs, and development within the state.

The legislature finds that aquaculture should be considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agriculture industry within the state.

The legislature further finds that in order to ensure the maximum yield and quality of cultured aquatic products, the department of fish and wildlife should provide diagnostic services that are workable and proven remedies to aquaculture disease problems.

It is therefore the policy of this state to encourage the development and expansion of aquaculture within the state. It is also the policy of this state to protect wildstock fisheries by providing an effective disease inspection and control program and prohibiting the release of salmon or steelhead trout by the private sector into the public waters of the state and the subsequent recapture of such species as in the practice commonly known as ocean ranching. [1994 c 264 § 4; 1985 c 457 § 1.]

Release and recapture of salmon or steelhead prohibited: RCW 75.08.300.

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

(1) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and animals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic

farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

Scientific Name	Common Name
Enteromorpha	green nori
Monostroma	awo-nori
Ulva	sea lettuce
Laminaria	konbu
Nereocystis	bull kelp
Porphyra	nori
Iridaea	
Haliotis	abalone
Zhlamys	pink scallop
Hinnites	rock scallop
Tatinopecten	Japanese or weathervane scallop
Protothaca	native littleneck clam
Tapes	manila clam
Saxidomus	butter clam
Mytilus	mussels
Crassostrea	Pacific oysters
Ostrea	Olympia and European oysters
Pacifasticus	crayfish
Macrobrachium	freshwater prawn
Salmo and Salvelinus	trout, char, and Atlantic salmon
Oncorhynchus	salmon
Ictalurus	catfish
Cyprinus	carp
Acipenseridae	Sturgeon

Private sector cultured aquatic products do not include herring spawn on kelp and other products harvested under a herring spawn on kelp permit issued in accordance with *RCW 75.28.245.

(4) "Department" means the department of agriculture.

(5) "Director" means the director of agriculture. [1989 c 176 § 3; 1985 c 457 § 2.]

*Reviser's note: RCW 75.28.245 was recodified as RCW 75.30.270 pursuant to 1993 c 340 § 54, effective January 1, 1994.

15.85.030 Department principal agency for aquaculture marketing support. The department is the principal state agency for providing state marketing support services for the private sector aquaculture industry. [1985 c 457 § 3.]

15.85.040 Rules. The department shall adopt rules under chapter 34.05 RCW to implement this chapter. [1985 c 457 § 7.]

15.85.050 Program to assist marketing and promotion of aquaculture products. The department shall exercise its authorities, including those provided by chapters 15.64, 15.65, 15.66, and 43.23 RCW, to develop a program for assisting the state's aquaculture industry to market and promote the use of its products. [1989 c 11 § 2; 1985 c 457 § 4.]

Severability—1989 c 11: See note following RCW 9A.56.220.

15.85.060 Private sector cultured aquatic products—Identification—Rules. The director shall establish identification requirements for private sector cultured aquatic products to the extent that identifying the source and quantity of the products is necessary to permit the department of fish and wildlife to administer and enforce Titles 75 and 77 RCW effectively. The rules shall apply only to those private sector cultured aquatic products the transportation, sale, processing, or other possession of which would otherwise be required to be licensed under Title 75 or 77 RCW if they were not cultivated by aquatic farmers. The rules shall apply to the transportation or possession of such products on land other than aquatic lands and may require that they be: (1) Placed in labeled containers or accompanied by bills of lading or sale or similar documents identifying the name and address of the producer of the products and the quantity of the products governed by the documents; or (2) both labeled and accompanied by such documents.

The director shall consult with the director of fish and wildlife to ensure that such rules enable the department of fish and wildlife to enforce the programs administered under those titles. If rules adopted under chapter 69.30 RCW satisfy the identification required under this section for shellfish, the director shall not establish different shellfish identification requirements under this section. [1994 c 264 § 5; 1988 c 36 § 6; 1985 c 457 § 5.]

Chapter 15.86 ORGANIC FOOD PRODUCTS

Sections

- 15.86.010 Purpose.
- 15.86.020 Definitions.
- 15.86.030 Marketing of organic products—Restrictions.
- 15.86.031 "Transition to organic food"—Out-of-state products.
- 15.86.035 Transition to organic food—Proof.
- 15.86.050 Producers to provide proof of compliance with law.
- 15.86.060 Rules, generally—List of approved substances—Violations—Penalties.
- 15.86.070 Certification program—Disposition of fees.
- 15.86.080 Labeling and recordkeeping requirements.
- 15.86.090 Mandatory certification—Exceptions.
- 15.86.100 Drift of prohibited substances—Tolerance levels.
- 15.86.110 Confidentiality of business related information.

Kosher food products: Chapter 69.90 RCW.

15.86.010 Purpose. The legislature recognizes a public benefit in establishing standards for agricultural products marketed and labeled using the term "organic" or a derivative of the term "organic." Such standards shall also facilitate the development of out-of-state markets for Washington food grown by organic methods. [1992 c 71 § 1; 1985 c 247 § 1.]

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

(1) "Director" means the director of the department of agriculture or the director's designee.

(2) "Organic food" means any agricultural product, including meat, dairy, and beverage, that is marketed using the term organic or any derivative of organic, other than the

phrase "transition to organic food," in its labeling or advertising.

(3) "Producer" means any person or organization who or which grows, raises, or produces an agricultural product.

(4) "Vendor" means anyone who sells or arranges the sale of organic food to the consumer or another vendor.

(5) "Transition to organic food" means any food product that satisfies all of the requirements of organic food except the time requirements and satisfied all of the requirements of RCW 15.86.031.

(6) "Organic certifying agent" means any third-party certification organization that is recognized by the director by rule as being one which imposes, for certification, standards consistent with this chapter.

(7) "Processor" means any person engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, or otherwise processing organic food.

(8) "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.

(9) "Department" means the state department of agriculture.

(10) "Represent" means to hold out as or to advertise.

(11) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media. [1992 c 71 § 2; 1989 c 354 § 32; 1985 c 247 § 2.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.86.030 Marketing of organic products—Restrictions. To be labeled, sold, or represented as an organic food, a product shall be produced with only those materials and practices approved under RCW 15.86.060. A producer, processor, or a vendor shall not represent, sell, or offer for sale any food product with the representation that the product is an organic food if the producer, processor, or vendor knows, or in the case of a producer or processor has reason to know, that the food has been grown, raised, or produced with the use of any prohibited materials listed by the director under RCW 15.86.060. Organic animal products shall be considered as "grown, raised, or produced" with a substance listed by the director under RCW 15.86.060 if the substance has been applied to the plants, soil, water, or animal, on or in which the organic animal product is being produced during such time frame as specified by the director by rule. Other food products shall be considered as "grown, raised, or produced" with a substance listed by the director under RCW 15.86.060 if the substance is applied to the plants, soil, or water, on or in which the food product is being produced at any time from three years before harvest to the final sale to retail purchasers. [1992 c 71 § 3; 1989 c 354 § 30; 1985 c 247 § 3.]

Effective date—1989 c 354 § 30: "Section 30 of this act shall take effect on January 1, 1991." [1989 c 354 § 87.]

Severability—1989 c 354: See note following RCW 15.36.012.

Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020: RCW 19.86.023.

15.86.031 "Transition to organic food"—Out-of-state products. (1) Except as provided in RCW 15.86.100, it shall be unlawful to represent, sell, or offer for sale as organic food, products that have been grown, raised, or produced if harvest of the food product occurs within three years of the most recent use of any prohibited substance as listed by the director under RCW 15.86.060.

(2) Food products may be sold as "transition to organic food" if they have had no applications of prohibited substances within one year before harvest of the food crop.

(3) No out-of-state products shall be labeled or sold as organic without having first received an organic certification from an organic certifying agent meeting all requirements established under this chapter. [1992 c 71 § 4; 1989 c 354 § 31.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.86.035 Transition to organic food—Proof. (1) A producer or a vendor shall not sell or offer for sale any food product with the representation that the food product is a transition to organic food if the producer or vendor knows, or has reason to know, that the food product does not satisfy the requirements of RCW 15.86.020(5).

(2) A producer shall not sell to a vendor any food product that the producer represents as a transition to organic food unless, before the sale, the producer provides the vendor with a sworn statement that the producer has grown, raised, or produced the product in conformance with RCW 15.86.020(5) and 15.86.031. [1989 c 354 § 33.]

Severability—1989 c 354: See note following RCW 15.36.012.

15.86.050 Producers to provide proof of compliance with law. A producer shall not sell to a vendor or processor any food product which the producer represents as an organic food unless before the sale the producer provides the vendor or processor with an organic food certificate or a sworn statement that the producer has grown, raised, or produced the product in conformance with this chapter. [1992 c 71 § 5; 1985 c 247 § 5.]

15.86.060 Rules, generally—List of approved substances—Violations—Penalties. (1) The director shall adopt such rules and regulations, in conformity with chapter 34.05 RCW, as the director believes are appropriate for the proper administration of this chapter.

(2) The director shall establish a list of approved substances that may be used in the production, processing, and handling of organic food. This list shall:

(a) Approve the use of natural substances except for specific natural substances that may not be used in the production and handling of agricultural products labeled as organic because these substances would be harmful to human health or the environment and are inconsistent with organic farming principles;

(b) Prohibit the use of synthetic substances except for specific synthetic substances that may be used in the production and handling of agricultural products labeled as organic because these substances:

(i) Would not be harmful to human health or the environment;

(ii) Are necessary to the production or handling of the agricultural products;

(iii) Are consistent with organic farming principles; and

(iv) Are used in the production of agricultural products and contain active synthetic ingredients in the following categories: Copper and sulfur compounds; toxins derived from bacteria; pheromones; soaps; horticultural oils; vitamins and minerals; livestock parasiticides and medicines; and production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers; or

(v) Are used in production and contain synthetic inert ingredients.

(3) The director shall issue orders to producers, processors, or vendors whom he or she finds are violating any provision of this chapter, or rules or regulations adopted under this chapter, to cease their violations and desist from future violations. Whenever the director finds that a producer, processor, or vendor has committed a violation, the director shall impose on and collect from the violator a civil fine not exceeding the total of the following amounts: (a) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions in respect to the violation; and (b) one thousand dollars.

(4) The director may deny, suspend, or revoke a certification provided for in this chapter if he or she determines that an applicant or certified person has violated this chapter or rules adopted under it. [1992 c 71 § 7; 1985 c 247 § 6.]

15.86.070 Certification program—Disposition of fees. (1) The director may adopt rules establishing a certification program for producers, processors, and vendors of organic or transition to organic food. The rules may govern, but are not limited to governing: The number and scheduling of on-site visits, both announced and unannounced, by certification personnel; recordkeeping requirements; and the submission of product samples for chemical analysis. The rules shall include a fee schedule that will provide for the recovery of the full cost of the organic food program. Fees collected under this section shall be deposited in an account within the agricultural local fund and the revenue from such fees shall be used solely for carrying out the provisions of this section, and no appropriation is required for disbursement from the fund. The director may employ such personnel as are necessary to carry out the provisions of this section.

(2) The fees established under this section may be increased in excess of the fiscal growth factor as provided in RCW 43.135.055 for the fiscal year ending June 30, 1998. [1997 c 303 § 4; 1992 c 71 § 10; 1989 c 354 § 34; 1987 c 393 § 12.]

Findings—1997 c 303: See note following RCW 43.135.055

Severability—1989 c 354: See note following RCW 15.36.012.

15.86.080 Labeling and recordkeeping requirements. Organic food products handled, processed, sold, offered for sale, advertised, or represented shall be labeled as organic on all invoices, boxes, bins, and other packaging and documentation associated with the product. All organic food products sold or processed in the state shall have

recordkeeping sufficient to track the product to the farm where the food was grown, raised, or produced. [1992 c 71 § 6.]

Captions not law—1992 c 71: "Captions as used in sections 6, 8, 9, and 13 of this act do not constitute part of the law." [1992 c 71 § 13.]

15.86.090 Mandatory certification—Exceptions. (1) It is unlawful for any person to sell, offer for sale, or process any agricultural product within this state with an organic label unless that person is certified under this chapter by the department or an official organic certifying agent.

(2) Subsection (1) of this section shall not apply to (a) final retailers of organic food that do not process organic food products or (b) producers who sell no more than five thousand dollars annually in value of agricultural products directly to consumers. [1992 c 71 § 8.]

Captions not law—1992 c 71: See note following RCW 15.86.080.

15.86.100 Drift of prohibited substances—Tolerance levels. (1) An agricultural product that is being grown, raised, or produced under the provisions of this chapter may not be labeled, sold, or represented as organic if during the course of the crop year it is subjected to drift of materials not on the approved substances list as established by the director under RCW 15.86.060.

An agricultural product that is being grown, raised, or produced under the provisions of this chapter and is subjected to drift of prohibited materials may be labeled or sold as organic in the subsequent crop year as long as the tolerance levels of prohibited materials do not exceed the levels stated in subsection (2) of this section.

(2) An agricultural product that is being grown, raised, or produced under the provisions of this chapter and contains residues of materials not on the approved substances list established by the director under RCW 15.86.060 in excess of five percent of the United States environmental protection agency tolerance level or, where there is no tolerance level, five percent of the United States food and drug administration action level may not be labeled, sold, or represented as organic. [1992 c 71 § 9.]

Captions not law—1992 c 71: See note following RCW 15.86.080.

15.86.110 Confidentiality of business related information. (1) Except as provided in subsection (2) of this section, the department shall keep confidential any business related information obtained under this chapter concerning an entity certified under this chapter or an applicant for such certification and such information shall be exempt from public inspection and copying under chapter 42.17 RCW.

(2) Applications for certification under this chapter and laboratory analyses pertaining to that certification shall be available for public inspection and copying. [1992 c 71 § 11.]

Chapter 15.88
WINE COMMISSION

Sections	
15.88.010	Legislative declaration.
15.88.020	Definitions.
15.88.030	Wine commission created—Composition.
15.88.040	Designation of commission members—Terms.
15.88.050	Appointment of members.
15.88.060	Enforcement of commission obligations against commission assets—Liability of commission members and employees.
15.88.070	Commission powers and duties.
15.88.080	Research, promotional, and educational campaign.
15.88.090	Campaign goals.
15.88.100	Commission members' votes weighted—Composition of commission if assessment not effective July 1, 1989—Votes.
15.88.110	Assessments on wine producers and growers to fund commission.
15.88.120	List of growers of vinifera grapes—Reporting system.
15.88.130	Annual assessment on harvested vinifera grapes—Approval by referendum—Rules.
15.88.140	Referendum determining grower participation—Effect.
15.88.150	Deposit of moneys.
15.88.160	Assessment constitutes debt—Penalty for nonpayment—Civil action.
15.88.900	Construction—1987 c 452.
15.88.901	Effective dates—1987 c 452.
15.88.902	Severability—1987 c 452.

15.88.010 Legislative declaration. The legislature declares that:

(1) Marketing is a dynamic and changing part of Washington agriculture and a vital element in expanding the state economy.

(2) The sale in the state and export to other states and abroad of wine made in the state contribute substantial benefits to the economy of the state, provide a large number of jobs and sizeable tax revenues, and have an important stabilizing effect on prices received by agricultural producers. Development of exports of these commodities abroad will contribute favorably to the balance of trade of the United States and of the state. The sale and export are therefore affected with the public interest.

(3) The production of wine grapes in the state is a new and important segment of Washington agriculture which has potential for greater contribution to the economy of the state if it undergoes healthy development.

(4) The general welfare of the people of the state will be served by healthy development of the activities of growing and processing wine grapes, which development will improve the tax bases of local communities in which agricultural land and processing facilities are located, and obviate the need for state and federal funding of local services. The industries are therefore affected with the public interest.

(5) Creation of a commission for the public purpose of administering the revenue of the commission under RCW 66.24.210(3) for the enhancement of production of wine grapes and wine and the marketing of Washington wine will materially advance the industries of growing and processing wine grapes and thereby the interests of the citizens of the state. [1987 c 452 § 1.]

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

(1) "Commission" means the Washington wine commission.

(2) "Director" means the director of agriculture or the director's duly appointed representative.

(3) "Department" means the department of agriculture.

(4) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(5) "Grower" means a person who has at least five acres in production of vinifera grapes.

(6) "Growers' association" means a nonprofit association of Washington producers of vinifera grapes, whether or not incorporated, which the director finds to comprise the interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group of growers of vinifera grapes within the state identified by the director as fairly representing growers of vinifera grapes within the state.

(7) "Vinifera grapes" means the agricultural product commonly known as VITIS VINIFERA and those hybrid of VITIS VINIFERA which have predominantly the character of VITIS VINIFERA.

(8) "Producer" means any person or other entity which grows within the state vinifera grapes or any person or other entity licensed under Title 66 RCW to produce within the state wine made predominantly from vinifera grapes.

(9) "Wine producer" means any person or other entity licensed under Title 66 RCW to produce within the state wine from vinifera grapes.

(10) "Eastern Washington" means that portion of the state lying east of the Cascade mountain range.

(11) "Western Washington" means that portion of the state lying west of the Cascade mountain range.

(12) "Wine" for the purposes of this section shall be as defined in RCW 66.04.010.

(13) "Wine institute" means a nonprofit association of Washington wine producers, whether or not incorporated, which the director finds to comprise interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group composed of all such producers identified as actively engaged in the production of wine within the state.

(14) "Handler" means any Washington winery, or processor, juicer, grape broker, agent, or person buying or receiving vinifera grapes to be passed on or exported either as grapes, juice, or wine. [1988 c 257 § 6; 1987 c 452 § 2.]

15.88.030 Wine commission created—Composition.

(1) There is created an agricultural commodity commission to be known and designated as the Washington wine commission. Except as provided in RCW 15.88.100(2), the commission shall be composed of eleven voting members; five voting members shall be growers, five voting members shall be wine producers, and one voting member shall be a wine distributor licensed under RCW 66.24.200. Of the grower members, at least one shall be a person who does not have over fifty acres of vinifera grapes in production, at least one shall be a person who has over one hundred acres of

vinifera grapes in production, and two may be persons who produce and sell their own wine. Of the wine producer members, at least one shall be a person producing not more than twenty-five thousand gallons of wine annually, at least one shall be a person producing over one million gallons of wine annually, and at least two shall be persons who produce wine from their own grapes. In addition, at least one member shall be a wine producer located in western Washington and at least two members shall be wine producers located in eastern Washington.

(2) In addition to the voting members identified in subsection (1) of this section, the commission shall have one nonvoting member who is a wine producer in this state whose principal wine or wines are produced from fruit other than vinifera grapes. The director of agriculture, or the director's designee, shall serve as an ex officio, nonvoting member.

(3) Except as provided in RCW 15.88.100(2), seven voting members of the commission constitute a quorum for the transaction of any business of the commission.

(4) Each voting member of the commission shall be a citizen and resident of this state and over the age of twenty-one years. Each voting member, except the member holding position eleven, must be or must have been engaged in that phase of the grower or wine producer industry that he or she is appointed to represent, and must during his or her term of office derive a substantial portion of income therefrom, or have a substantial investment in the growing of vinifera grapes or the production of wine from vinifera grapes as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the growing of vinifera grapes or wine production from vinifera grapes; or the manager or executive officer of such a corporation. These qualifications apply throughout each member's term of office. [1997 c 321 § 40; 1988 c 254 § 12; 1987 c 452 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

15.88.040 Designation of commission members—

Terms. The appointive voting positions on the commission shall be designated as follows: The wine producers shall be designated positions one, two, three, four, and five; the growers shall be designated positions six, seven, eight, nine, and ten; and the wine wholesaler shall be position eleven. The nonvoting industry member shall be designated position number twelve. The member designated as filling position one shall be a person producing over one million gallons of wine annually. The member designated as position one shall be the sole representative, directly or indirectly, of the producer eligible to hold position one and in no event shall that producer directly or indirectly control more than fifty percent of the votes of the commission.

Except as provided in RCW 15.88.100(2), the regular terms of office shall be three years from the date of appointment and until their successors are appointed. However, the first terms of the members appointed upon July 1, 1987, shall be as follows: Positions one, six, and eleven shall terminate July 1, 1990; positions two, four, seven, and nine shall terminate July 1, 1989; and positions three, five, eight, and ten shall terminate July 1, 1988. The term of the initial

nonvoting industry member shall terminate July 1, 1990. [1988 c 254 § 13; 1987 c 452 § 4.]

15.88.050 Appointment of members. The director shall appoint the members of the commission. In making such appointments of the voting members, the director shall take into consideration recommendations made by the growers' association and the wine institute as the persons recommended for appointment as members of the commission. In appointing persons to the commission, the director shall seek to ensure as nearly as possible a balanced representation on the commission which would reflect the composition of the growers and wine producers throughout the state as to number of acres cultivated and amount of wine produced.

The appointment shall be carried out immediately subsequent to July 1, 1987, and members so appointed as set forth in this chapter shall serve for the periods set forth for the original members of the commission under RCW 15.88.040.

In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of the position shall immediately be filled by appointment by the director.

Each member of the commission shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1987 c 452 § 5.]

15.88.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees.

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 or her 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 members of the commission. [1987 c 452 § 6.]

15.88.070 Commission powers and duties. The powers and duties of the commission include:

(1) To elect a chairman and such officers as the commission deems advisable. The officers shall include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its own governance, which shall provide for the holding of an annual meeting for the election of officers and transaction of other business and for such other meetings as the commission may direct;

(2) To do all things reasonably necessary to effect the purposes of this chapter. However, the commission shall have no legislative power;

(3) At the pleasure of the commission, to employ and discharge managers, secretaries, agents, attorneys, and employees and to engage the services of independent contractors as the commission deems necessary, to prescribe their duties, and to fix their compensation;

(4) To receive donations of wine from wineries for promotional purposes;

(5) To engage directly or indirectly in the promotion of Washington wine, including without limitation the acquisition in any lawful manner and the dissemination without charge of wine, which dissemination shall not be deemed a sale for any purpose and in which dissemination the commission shall not be deemed a wine producer, supplier, or manufacturer of any kind or the clerk, servant, or agent of a producer, supplier, or manufacturer of any kind. Such dissemination shall be for agricultural development or trade promotion, which may include promotional hosting and shall in the good faith judgment of the commission be in aid of the marketing, advertising, or sale of wine, or of research related to such marketing, advertising, or sale;

(6) To acquire and transfer personal and real property, establish offices, incur expense, enter into contracts (including contracts for creation and printing of promotional literature, which contracts shall not be subject to chapter 43.78 RCW, but which shall be cancelable by the commission unless performed under conditions of employment which substantially conform to the laws of this state and the rules of the department of labor and industries). The commission may create such debt and other liabilities as may be reasonable for proper discharge of its duties under this chapter;

(7) To maintain such account or accounts with one or more qualified public depositaries as the commission may direct, to cause moneys to be deposited therein, and to expend moneys for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(8) To cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(9) To create and maintain a list of producers and to disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(10) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, commission or other entity for the purpose of promoting the general welfare of the vinifera grape industry and particularly for the purpose of assisting in the sale and distribution of Washington wine in domestic and foreign commerce, expending moneys 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 Washington wine in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds; and

(11) 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. [1987 c 452 § 7.]

15.88.080 Research, promotional, and educational campaign. The commission shall create, provide for, and conduct a comprehensive and extensive research, promotional, and educational campaign as crop, sales, and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account the information adduced thereby in the discharge of its duties under this chapter. [1987 c 452 § 8.]

15.88.090 Campaign goals. The commission shall adopt as major objectives of its research, promotional, and educational campaign such goals as will serve the needs of producers, which may include, without limitation, efforts to:

(1) Establish Washington wine as a major factor in markets everywhere;

(2) Promote Washington wineries as tourist attractions;

(3) Encourage favorable reporting of Washington wine and wineries in the press throughout the world;

(4) Establish the state in markets everywhere as a major source of premium wine;

(5) Encourage favorable legislative and regulatory treatment of Washington wine in markets everywhere;

(6) Foster economic conditions favorable to investment in the production of vinifera grapes and Washington wine;

(7) Advance knowledge and practice of production of wine grapes in this state;

(8) Discover and develop new and improved vines for the reliable and economical production of wine grapes in the state; and

(9) Advance knowledge and practice of the processing of wine grapes in the state. [1987 c 452 § 9.]

15.88.100 Commission members' votes weighted—Composition of commission if assessment not effective July 1, 1989—Votes. (1) Except as provided in subsections (2) and (3) of this section, the vote of each of the voting members of the commission shall be weighted as provided by this subsection for the transaction of any of the business of the commission. The total voting strength of the entire voting membership of the commission shall be eleven votes. The vote of position one shall be equal to the lesser of the following: Five and one-half votes; or eleven votes times the percentage of the wine produced in the state that is produced by the person filling position one. The percentage shall be based upon the amount of wine produced in the previous calendar year and shall be rounded to the nearest ten percent. The remaining votes of the membership of the commission shall be divided equally among the remaining members of the commission.

(2) In the event the assessment described in RCW 66.24.215(1)(b) is not effective on July 1, 1989, the positions designated for growers cease to exist. In such an event, the commission shall be composed of six voting members and two nonvoting members. The nonvoting industry member shall be position seven. Four voting members of the

commission constitute a quorum for the modified commission. Of the six votes of the entire voting membership of the modified commission, the vote of position one shall be the lesser of the following: Three votes; or six votes times the percentage of the wine produced in the state that is produced by the person filling position one. The percentage shall be based upon the amount of wine produced in the previous calendar year and shall be rounded to the nearest ten percent. The remaining votes of the membership of the commission shall be divided equally among the remaining members of the commission.

(3) In the event that the percentage of wine produced by the producer represented by position one falls below twenty-five percent of the wine produced in this state, the weighted voting mechanism provided for in subsections (1) and (2) of this section shall cease to be effective. In that case, the voting shall be based on one vote per position. [1988 c 254 § 14; 1987 c 452 § 10.]

Effective date—1988 c 254 § 14: "Section 14 of this act shall take effect July 1, 1989." [1988 c 254 § 15.]

15.88.110 Assessments on wine producers and growers to fund commission. See RCW 66.24.215.

15.88.120 List of growers of vinifera grapes—Reporting system. (1) The commission shall cause a list to be prepared of all Washington growers from any information available from the department, growers' association, or wine producers. This list shall contain the names and addresses of all persons who grow vinifera grapes for sale or use by wine producers within this state and the amount (by tonnage) of vinifera grapes produced during the period designated by the commission. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up to date in accordance with evidence and information available to the commission on or before December 31st of each year. For all purposes of giving notice and holding referendums, the list on hand, corrected up to the day next preceding the date for issuing notices or ballots as the case may be, is, for purposes of this chapter, deemed to be the list of all growers entitled to notice or to assent or dissent or to vote.

(2) The commission shall develop a reporting system to document that the vinifera grape growers in this state are reporting quantities of vinifera grapes grown and subject to the assessment as provided in RCW 15.88.130. [1988 c 257 § 1.]

15.88.130 Annual assessment on harvested vinifera grapes—Approval by referendum—Rules. (1) Pursuant to approval by referendum in accordance with RCW 15.88.140, commencing on July 1, 1989, there shall be levied, and the commission shall collect, upon all vinifera grapes grown within this state an annual assessment of three dollars per ton of vinifera grapes harvested to be paid by the grower of the grapes.

(2) The commission shall recommend rules to the director prescribing the time, place, and method for payment and collection of this assessment. For such purpose, the commission may recommend that the director, by rule,

require the wine producers or handlers within this state to collect the grower assessments from growers whose vinifera grapes they purchase or accept delivery and remit the assessments to the commission, and provide for collecting assessments from growers who ship directly out of state.

(3) After considering any recommendations made under subsection (2) of this section, the director shall adopt rules, in accordance with chapter 34.05 RCW, prescribing the time, place, and method for the payment and collection of the assessment levied under this section and approved under RCW 15.88.140. [1988 c 257 § 2.]

15.88.140 Referendum determining grower participation—Effect. (1) For purposes of determining grower participation in the commission and assessment under RCW 15.88.130, the director shall conduct a referendum among all vinifera grape growers within the state. The requirements of assent or approval of the referendum will be held to be complied with if: (a) At least fifty-one percent by numbers of growers replying in the referendum vote affirmatively or at least fifty-one percent by acreage of those growers replying in the referendum vote affirmatively; and (b) thirty percent of all vinifera grape growers and thirty percent by acreage have been represented in the referendum to determine assent or approval of participation and assessment. The referendum shall be conducted on or before September 15, 1988.

(2) If the director determines that the requisite assent has been given, the director shall direct the commission to put into force the assessment in RCW 15.88.130.

(3) If the director determines that the requisite assent has not been given, the director shall direct the commission not to levy the assessment provided in RCW 15.88.130. If the requisite assent has not been given, the commission shall not continue to specifically foster the interests of vinifera grape growers. [1988 c 257 § 3.]

15.88.150 Deposit of moneys. The commission shall deposit moneys collected under RCW 15.88.130 in a separate account in the name of the commission in any bank that is a state depository. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. None of the provisions of RCW 43.01.050 apply to this account or to the moneys received, collected, or expended as provided in RCW 15.88.120 through 15.88.160. [1988 c 257 § 4.]

15.88.160 Assessment constitutes debt—Penalty for nonpayment—Civil action. A due and payable assessment levied in such specified amount as determined by the commission under RCW 15.88.130 constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a person fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails to pay any such due and payable assessment or other such sum, the commission may bring a

civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable. [1988 c 257 § 5.]

15.88.900 Construction—1987 c 452. This act shall be liberally construed to effectuate its purposes. [1987 c 452 § 19.]

Reviser's note: For codification of "this act" [1987 c 452], see Codification Tables, Volume 0.

15.88.901 Effective dates—1987 c 452. (1) Sections 1 through 9 and 11 through 20 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987.

(2) Section 10 of this act shall take effect July 1, 1989. [1987 c 452 § 21.]

15.88.902 Severability—1987 c 452. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 452 § 20.]

Chapter 15.92

CENTER FOR SUSTAINING AGRICULTURE AND NATURAL RESOURCES

Sections

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15.92.005 Finding. The legislature finds that public concerns are increasing about the need for significant efforts to develop sustainable systems in agriculture. The sustainable systems would address many anxieties, including the erosion of agricultural lands, the protection and wise utilization of natural resources, and the safety of food production. Consumers have demonstrated their apprehension in the marketplace by refusing to purchase products whose safety is suspect and consumer confidence is essential for a viable agriculture in Washington. Examples of surface and ground water contamination by pesticides and chemical fertilizers raise concerns about deterioration of environmental quality.

Reducing soil erosion would maintain water quality and protect the long-term viability of the soil for agricultural productivity. Both farmers and farm labor are apprehensive about the effects of pesticides on their health and personal safety. Development of sustainable farming systems would strengthen the economic viability of Washington's agricultural production industry.

Public anxieties over the use of chemicals in agriculture have resulted in congress amending the federal insecticide, fungicide and rodenticide act which requires all pesticides and their uses registered before November 1984 to be reregistered, complying with present standards, by the end of 1997. The legislature finds that the pesticide reregistration process and approval requirements could reduce the availability of chemical pesticides for use on minor crops in Washington and may jeopardize the farmers' ability to grow these crops in Washington.

The legislature recognizes that Washington State University supports research and extension programs that can lead to reductions in pesticide use where viable alternatives are both environmentally and economically sound. Yet, the legislature finds that a focused and coordinated program is needed to develop possible alternatives, increase public confidence in the safety of the food system, and educate farmers and natural resource managers on land stewardship.

The legislature further finds that growers, processors, and agribusiness depend upon pesticide laboratories associated with manufacturers, regional universities, state departments of agriculture, and the United States department of agriculture to provide residue data for registering essential pesticides. The registration of uses for minor crops, which include vegetables, fruits, nuts, berries, nursery and greenhouse crops, and reregistration of needed chemicals, are activities of particular concern to ensure crop production. Furthermore, public demands for improved information and education on pesticides and risk assessment efforts justify these efforts.

The legislature further finds that multiple alternatives are needed for pest control, including programs for integrated pest management, genetic resistance to pests, biological control, cultural practices, and the use of appropriate approved chemicals. [1991 c 341 § 1.]

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

(1) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including but not limited to, products qualifying as organic food products under chapter 15.86 RCW, private sector cultured aquatic products as defined in RCW 15.85.020, bees and honey, and Christmas trees but not including timber or timber products.

(2) "Center" means the center for sustaining agriculture and natural resources established at Washington State University.

(3) "Laboratory" means the food and environmental quality laboratory established at Washington State University at Tri-Cities.

(4) "Integrated pest management" is a strategy that uses various combinations of pest control methods, biological,

cultural, and chemical, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(5) "IR-4 program" means interregional research project number four, clearances of chemicals and biologics for minor or special uses, established in 1963 by the cooperative state research service of the United States department of agriculture, the coordinated national program involving land-grant universities and the United States department of agriculture to provide data required for the registration of pesticides needed for the production of minor crops.

(6) "Minor crop" means an agricultural crop considered to be minor in the national context of registering pesticides.

(7) "Minor use" means a pesticide use considered to be minor in the national context of registering pesticides including, but not limited to, a use for a special local need.

(8) "Natural resources" means soil, water, air, forests, wetlands, wildlands, and wildlife.

(9) "Pesticide" means chemical or biologic used to control pests such as insect, rodent, nematode, snail, slug, weed, virus, or any organism the director of agriculture may declare to be a pest.

(10) "Registration" means use of a pesticide approved by the state department of agriculture.

(11) "Sustainable agriculture" means a systems approach to farming, ranching, and natural resource production that builds on and supports the physical, biological, and ecological resource base upon which agriculture depends. The goals of sustainable agriculture are to provide human food and fiber needs in an economically viable manner for the agriculture industry and in a manner which protects the environment and contributes to the overall safety and quality of life. [1995 c 390 § 4; 1991 c 341 § 2.]

15.92.020 Center established. A center for sustaining agriculture and natural resources is established at Washington State University. The center shall provide state-wide leadership in research, extension, and resident instruction programs to sustain agriculture and natural resources. [1991 c 341 § 3.]

15.92.030 Primary activities—Cooperative with University of Washington. The center is to work cooperatively with the University of Washington to maximize the use of financial resources in addressing forestry issues. The center's primary activities include but are not limited to:

(1) Research programs which focus on developing possible alternative production and marketing systems through:

- (a) Integrated pest management;
- (b) Biological pest control;
- (c) Plant and animal breeding;
- (d) Conservation strategies; and
- (e) Understanding the ecological basis of nutrient management;

(2) Extension programs which focus on:

- (a) On-farm demonstrations and evaluation of alternative production practices;
- (b) Information dissemination, and education concerning sustainable agriculture and natural resource systems; and

(c) Communication and training on sustainable agriculture strategies for consumers, producers, and farm and conservation-related organizations;

(3) On-farm testing and research to calculate and demonstrate costs and benefits, including economic and environmental benefits and trade-offs, inherent in farming systems and technologies;

(4) Crop rotation and other natural resource processes such as pest-predator interaction to mitigate weed, disease, and insect problems, thereby reducing soil erosion and environmental impacts;

(5) Management systems to improve nutrient uptake, health, and resistance to diseases and pests by incorporating the genetic and biological potential of plants and animals into production practices;

(6) Soil management, including conservation tillage and other practices to minimize soil loss and maintain soil productivity; and

(7) Animal production systems emphasizing preventive disease practices and mitigation of environmental pollution. [1991 c 341 § 4.]

15.92.040 Administrator. The center is managed by an administrator. The administrator shall hold a joint appointment as an assistant director in the Washington State University agricultural research center and cooperative extension.

(1) A committee shall advise the administrator. The dean of the Washington State University college of agriculture and home economics shall make appointments to the advisory committee so the committee is representative of affected groups, such as the Washington department of social and health services, the Washington department of ecology, the Washington department of agriculture, the chemical and fertilizer industry, food processors, marketing groups, consumer groups, environmental groups, farm labor, and natural resource and agricultural organizations.

(2) Each appointed member shall serve a term of three years, and one-third are appointed every year. The entire committee is appointed the first year: 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. A member shall continue to serve until a successor is appointed. Vacancies are filled by appointment for the unexpired term. The members of the advisory committee shall serve without compensation but shall be reimbursed for travel expenses incurred while engaged in the business of the committee as provided in RCW 43.03.050 and 43.03.060.

(3) It is the responsibility of the administrator, in consultation with the advisory committee, to:

- (a) Recommend research and extension priorities for the center;
- (b) Conduct a competitive grants process to solicit, review, and prioritize research and extension proposals; and
- (c) Advise Washington State University on the progress of the development and implementation of research, teaching, and extension programs that sustain agriculture and natural resources of Washington. [1991 c 341 § 5.]

15.92.050 Food and environmental quality laboratory. A food and environmental quality laboratory operated by

Washington State University is established in the Tri-Cities area to conduct pesticide residue studies concerning fresh and processed foods, in the environment, and for human and animal safety. The laboratory shall cooperate with public and private laboratories in Washington, Idaho, and Oregon. [1991 c 341 § 6.]

15.92.060 Laboratory responsibilities. The responsibilities of the laboratory shall include:

- (1) Evaluating regional requirements for minor crop registration through the federal IR-4 program;
- (2) Providing a program for tracking the availability of effective pesticides for minor crops, minor uses, and emergency uses in this state;
- (3) Conducting studies on the fate of pesticides on crops and in the environment, including soil, air, and water;
- (4) Improving pesticide information and education programs;
- (5) Assisting federal and state agencies with questions regarding registration of pesticides which are deemed critical to crop production, consistent with priorities established in RCW 15.92.070; and
- (6) Assisting in the registration of biopesticides, pheromones, and other alternative chemical and biological methods. [1995 c 390 § 5; 1991 c 341 § 7.]

15.92.070 Board to advise laboratory. The laboratory is advised by a board appointed by the dean of the Washington State University college of agriculture and home economics. The dean shall cooperate with appropriate officials in Washington, Idaho, and Oregon in selecting board members.

(1) The board shall consist of one representative from each of the following interests: A human toxicologist or a health professional knowledgeable in worker exposure to pesticides, the Washington State University vice-provost for research or research administrator, representatives from the state department of agriculture, the department of ecology, the department of health, the department of labor and industry [industries], privately owned Washington pesticide analytical laboratories, federal regional pesticide laboratories, an Idaho and Oregon laboratory, whether state, university, or private, a chemical and fertilizer industry representative, farm organizations, food processors, marketers, farm labor, environmental organizations, and consumers. Each board member shall serve a three-year term. The members of the board shall serve without compensation but shall be reimbursed for travel expenses incurred while engaged in the business of the board as provided in RCW 43.03.050 and 43.03.060.

(2) The board is in liaison with the pesticide advisory board and the pesticide incident reporting and tracking panel and shall review the chemicals investigated by the laboratory according to the following criteria:

- (a) Chemical uses for which a data base exists on environmental fate and acute toxicology, and that appear safer environmentally than pesticides available on the market;
- (b) Chemical uses not currently under evaluation by public laboratories in Idaho or Oregon for use on Washington crops;

(c) Chemicals that have lost or may lose their registration and that no reasonably viable alternatives for Washington crops are known; and

(d) Other chemicals vital to Washington agriculture.

(3) The laboratory shall conduct research activities using approved good laboratory practices, namely procedures and recordkeeping required of the national IR-4 minor use pesticide registration program.

(4) The laboratory shall coordinate activities with the national IR-4 program. [1991 c 341 § 8.]

15.92.080 Annual report—Acceptable risk of human and environmental exposure. The center for sustaining agriculture and natural resources at Washington State University shall prepare and present an annual report to the appropriate legislative committees. The report shall include the center's priorities to find alternatives to the use of agricultural chemicals that pose human and environmental risks. The first report, due no later than November 1, 1992, shall use federal criteria of acceptable risk of human and environmental exposure for establishing such priorities and for conducting responsive research and education programs. For each subsequent year, the report shall detail the center's progress toward meeting the goals identified in the center's plan. [1991 c 341 § 9.]

15.92.090 Commission on pesticide registration—Established—Composition—Duration of membership—Compensation. (1) A commission on pesticide registration is established. The commission shall be composed of twelve voting members appointed by the governor as follows:

(a) Eight members from the following segments of the state's agricultural industry as nominated by a state-wide private agricultural association or agricultural commodity commission formed under Title 15 RCW: (i) The tree fruit industry; (ii) hop growers; (iii) potato growers; (iv) wheat growers; (v) vegetable and seed growers; (vi) berry growers; (vii) wine grape growers; and (viii) the nursery and landscape industry. Although members are appointed from various segments of the agriculture industry, they are appointed to represent and advance the interests of the industry as a whole.

(b) One member from each of the following: (i) Forest protection industry; (ii) food processors; (iii) agricultural chemical industry; and (iv) professional pesticide applicators. One member shall be appointed for each such segment of the industry and shall be nominated by a state-wide, private association of that segment of the industry. The representative of the agricultural chemical industry shall be involved in the manufacture of agricultural crop protection products.

The following shall be ex officio, nonvoting members of the commission: The coordinator of the interregional project number four at Washington State University; the director of the department of ecology or the director's designee; the director of the department of agriculture or the director's designee; the director of the department of labor and industries or the director's designee; and the secretary of the department of health or the secretary's designee.

(2) Each voting member of the commission shall serve a term of three years. However, the first appointments in the first year shall be made by the governor for one, two, and

three-year terms so that, in subsequent years, approximately one-third of the voting members shall be appointed each year. The governor shall assign the initial one, two, and three-year terms to members by lot. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office. Each member of the commission shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 for attending meetings of the commission and for performing special duties, in the way of official commission business, specifically assigned to the person by the commission. The voting members of the commission serve without compensation from the state other than such travel expenses.

(3) Nominations for the initial appointments to the commission under subsection (1) of this section shall be submitted by September 1, 1995. The governor shall make initial appointments to the commission by October 15, 1995.

(4) The commission shall elect a chair from among its voting members each calendar year. After its original organizational meeting, the commission shall meet at the call of the chair. A majority of the voting members of the commission constitutes a quorum and an official action of the commission may be taken by a majority vote of the voting members. [1995 c 390 § 1.]

15.92.095 Pesticide registration—Washington State University—Restrictions on use of state money—Commission approval required. (1) The following apply to the use of state moneys appropriated to Washington State University specifically and expressly for studies or activities regarding the registration of pesticides:

(a) The moneys may not be expended without the express approval of the commission on pesticide registration;

(b) The moneys may be used for: (i) Evaluations, studies, or investigations approved by the commission on pesticide registration regarding the registration or reregistration of pesticides for minor crops or minor uses or regarding the availability of pesticides for emergency uses. These evaluations, studies, or investigations may be conducted by the food and environmental quality laboratory or may be secured by the commission from other qualified laboratories, researchers, or contractors by contract, which contracts may include, but are not limited to, those purchasing the use of proprietary information; (ii) the tracking system described in RCW 15.92.060; and (iii) the support of the commission on pesticide registration and its activities; and

(c) Not less than twenty-five percent of such moneys shall be dedicated to studies or investigations concerning the registration or use of pesticides for crops that are not among the top twenty agricultural commodities in production value produced in the state, as determined annually by the Washington agricultural statistics service.

(2) The commission on pesticide registration shall establish priorities to guide it in approving the use of moneys for evaluations, studies, and investigations under this section. Each biennium, the commission shall prepare a contingency plan for providing funding for laboratory studies or investigations that are necessary to pesticide registrations

or related processes that will address emergency conditions for agricultural crops that are not generally predicted at the beginning of the biennium. [1995 c 390 § 2.]

15.92.100 Commission on pesticide registration—Duties. The commission on pesticide registration shall:

(1) Provide guidance to the food and environmental quality laboratory established in RCW 15.92.050 regarding the laboratory's studies, investigations, and evaluations concerning the registration of pesticides for use in this state for minor crops and minor uses and concerning the availability of pesticides for emergency uses;

(2) Encourage agricultural organizations to assist in providing funding, in-kind services, or materials for laboratory studies and investigations concerning the registration of pesticides for minor crops and minor uses that would benefit the organizations;

(3) Provide guidance to the laboratory regarding a program for: Tracking the availability of effective pesticides for minor crops, minor uses, and emergency uses; providing this information to organizations of agricultural producers; and maintaining close contact between the laboratory, the department of agriculture, and organizations of agricultural producers regarding the need for research to support the registration of pesticides for minor crops and minor uses and the availability of pesticides for emergency uses;

(4) Ensure that the activities of the commission and the laboratory are coordinated with the activities of other laboratories in the Pacific Northwest, the United States department of agriculture, and the United States environmental protection agency to maximize the effectiveness of regional efforts to assist in the registration of pesticides for minor crops and minor uses and in providing for the availability of pesticides for emergency uses for the region and the state; and

(5) Ensure that prior to approving any residue study that there is written confirmation of registrant support and willingness or ability to add the given minor crop to its label including any restrictions or guidelines the registrant intends to impose. [1995 c 390 § 3.]

15.92.105 Commission on pesticide registration—Report on activities—Review by legislature. By December 15, 2002, the commission shall file with the legislature a report on the activities supported by the commission for the period beginning on July 23, 1995, and ending on December 1, 2002. The report shall include an identification of: The priorities that have been set by the commission; the state appropriations made to Washington State University that have been within the jurisdiction of the commission; the evaluations, studies, and investigations funded in whole or in part by such moneys and the registrations and uses of pesticides made possible in large part by those evaluations, studies, and investigations; the matching moneys, in-kind services, and materials provided by agricultural organizations for those evaluations, studies, and investigations; and the program or programs for tracking pesticide availability provided by the laboratory under the guidance of the commission and the means used for providing this information to organizations of agricultural producers.

During the regular session of the legislature in the year 2003, the appropriate committees of the house of representatives and senate shall evaluate the effectiveness of the commission in fulfilling its statutory responsibilities. [1995 c 390 § 6.]

15.92.110 Commission on pesticide registration—Receipt of gifts, grants, and endowments. The commission on pesticide registration, and Washington State University on behalf of the commission, may receive such gifts, grants, and endowments from public or private sources as may be used from time to time, in trust or otherwise, for the use and benefit of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [1995 c 390 § 7.]

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. See 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 Dogs.
- 16.10 Dogs—Licensing—Dog control zones.
- 16.24 Stock restricted areas.
- 16.36 Animal health.
- 16.38 Livestock diseases—Diagnostic service program.
- 16.48 Inspection of meat storage or sale locations.
- 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.
- 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 and 9.61.200.

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.

Hurming a police dog: RCW 9A.76.200.

Killing of person by vicious animal: RCW 9A.32.070.

Larcenous appropriation of livestock: Chapter 9A.56 RCW.

Milk and milk products for animal food: Chapter 15.37 RCW.

Nuisances, agricultural activities: RCW 7.48.300 through 7.48.310.

Race horses: Chapter 67.16 RCW.

Stealing horses or cattle as larceny: Chapter 9A.56 RCW.

Chapter 16.04

TRESPASS OF ANIMALS—GENERAL

Sections

- 16.04.005 Liability for damages—Restraint—Notice.
- 16.04.010 Trespassing animals—Restraint—Damages and costs.
- 16.04.015 Damages, liability.
- 16.04.020 Notice of restraint—Owner known.
- 16.04.025 Owner of animals unknown—Procedure.
- 16.04.030 Actions for damages.
- 16.04.040 Jurisdiction—Appeal.
- 16.04.045 Continuance.
- 16.04.050 Substituted service.

(1998 Ed.)

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

16.04.100 Trespass via fence damaged by wildlife.

Dangerous dogs: RCW 16.08.070 through 16.08.100.

Disturbance on public highway: RCW 9A.84.030.

Fences: Chapter 16.60 RCW.

16.04.005 Liability for damages—Restraint—Notice.
See RCW 16.60.015.

16.04.010 Trespassing animals—Restraint—Damages and costs. Any person suffering damage done by any horses, mules, donkeys, cattle, goats, sheep, swine, or any such animals, which shall either trespass upon any land enclosed by lawful fence as provided in chapter 16.60 RCW or trespass while running at large in violation of chapter 16.24 RCW may retain and keep in custody such offending animals until the owner or person having possession of such animals shall pay such damage and costs, or until good and sufficient security be given for the same. [1989 c 286 § 1; 1925 ex.s. c 56 § 1; 1893 c 31 § 1; RRS § 3090.]

Severability—1989 c 286: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 286 § 26.]

Damages to stock on unfenced railroad: RCW 81.52.050 through 81.52.070.

Pleading answer in action to recover property distrained: RCW 4.36.140.

16.04.015 Damages, liability. Except as provided under RCW 16.04.100, whenever any animals trespass as provided in RCW 16.04.010, the owner or person having possession of such animal shall be liable for all damages the owner or occupant may sustain by reason of such trespass. [1994 c 263 § 1; 1989 c 286 § 2.]

Severability—1989 c 286: See note following RCW 16.04.010.

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 Owner of animals unknown—Procedure. If the owner or the person having in charge or possession such animals is unknown to the person sustaining the damage, the person retaining such animals shall, within twenty-

four hours, notify the county sheriff or the nearest state brand inspector as to the number, description, and location of the animals. The county sheriff or brand inspector shall examine the animals by brand, tattoo, or other identifying characteristics and attempt to ascertain ownership. If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector or county sheriff shall furnish this information and other pertinent information to the person holding the animals who in turn shall send the notice required in RCW 16.04.020 to the animals' owner of record by certified mail.

If the county sheriff or the brand inspector determines that there is no apparent damage to the property of the person retaining the animals, or if the person sustaining the damage contacts the county sheriff or brand inspector to have the animals removed from his or her property, such animals shall be removed in accordance with chapter 16.24 RCW. Such removal shall not prejudice the property owner's ability to recover damages through civil suit. [1989 c 286 § 21; 1985 c 415 § 24; 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092. Formerly RCW 16.04.020, part.]

Severability—1989 c 286: See note following RCW 16.04.010.

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. District judges 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 or herself aggrieved shall have the right of appeal to the superior court as in other cases. [1987 c 202 § 177; 1893 c 31 § 9; RRS § 3098.]

Intent—1987 c 202: See note following RCW 2.04.190.

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 newspaper of general circulation in the area where the plaintiff resides less than ten days previous to the day of trial. [1985 c 469 § 8; 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.]

16.04.100 Trespass via fence damaged by wildlife. If damages are caused by a trespassing animal, neither the

state nor the owner of the animal shall be liable if the owner of the animal can prove that the trespass is due to damage caused by wildlife to a lawful fence and, in a stock restricted area, the owner of the animal did not have a reasonable opportunity to repair the fence. The state shall pay all costs of transportation, advertising, legal proceedings, and keep of an animal that has been restrained pursuant to RCW 16.04.010. Claims filed under this section shall be processed according to the procedures under chapter 4.92 RCW. [1994 c 263 § 3.]

Chapter 16.08

DOGS

(Formerly: Dangerous dogs)

Sections

- 16.08.010 Liability for injury to stock by dogs.
- 16.08.020 Dogs injuring stock may be killed.
- 16.08.030 Marauding dog—Duty of owner to kill.
- 16.08.040 Dog bites—Liability.
- 16.08.050 Entrance on private property, when lawful.
- 16.08.060 Provocation as a defense.
- 16.08.070 Dangerous dogs—Definitions.
- 16.08.080 Dangerous dogs—Certificate of registration required—Prerequisites.
- 16.08.090 Dangerous dogs—Requirements for restraint—Potentially dangerous dogs—Dogs not declared dangerous.
- 16.08.100 Dangerous dogs—Confiscation—Conditions—Penalties for owners of dogs that attack—Dog fights, penalty.

16.08.010 Liability for injury to stock by dogs. 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. [1985 c 415 § 14; 1929 c 198 § 5; RRS § 3106. Prior: 1919 c 6 § 5; RCS § 3106.]

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 Marauding dog—Duty of owner to kill. 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 Dog bites—Liability. 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 Entrance on private property, when lawful. A person is lawfully upon the private property of such owner within the meaning of RCW 16.08.040 when such person is upon the property of the owner with the express or implied consent of the owner: PROVIDED, That said consent shall not be presumed when the property of the owner is fenced or reasonably posted. [1979 c 148 § 1; 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.]

16.08.070 Dangerous dogs—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 16.08.070 through 16.08.100.

(1) "Potentially dangerous dog" means any dog that when unprovoked: (a) Inflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

(2) "Dangerous dog" means any dog that according to the records of the appropriate authority, (a) has inflicted severe injury on a human being without provocation on public or private property, (b) has killed a domestic animal without provocation while off the owner's property, or (c) has been previously found to be potentially dangerous, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals.

(3) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

(4) "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

(5) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals.

(6) "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

(7) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal. [1987 c 94 § 1.]

Severability—1987 c 94: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 94 § 6.]

16.08.080 Dangerous dogs—Certificate of registration required—Prerequisites. (1) It is unlawful for an owner to have a dangerous dog in the state without a certificate of registration issued under this section. This section and RCW 16.08.090 and 16.08.100 shall not apply to police dogs as defined in RCW 4.24.410.

(2) The animal control authority of the city or county in which an owner has a dangerous dog shall issue a certificate of registration to the owner of such animal if the owner presents to the animal control unit sufficient evidence of:

(a) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

(b) A surety bond issued by a surety insurer qualified under chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least fifty thousand dollars, payable to any person injured by the vicious dog; or

(c) A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW in the amount of at least fifty thousand dollars, insuring the owner for any personal injuries inflicted by the dangerous dog.

(3)(a) If an owner has the dangerous dog in an incorporated area that is serviced by both a city and a county animal control authority, the owner shall obtain a certificate of registration from the city authority;

(b) If an owner has the dangerous dog in an incorporated or unincorporated area served only by a county animal control authority, the owner shall obtain a certificate of registration from the county authority;

(c) If an owner has the dangerous dog in an incorporated or unincorporated area that is not served by an animal control authority, the owner shall obtain a certificate of registration from the office of the local sheriff.

(4) Cities and counties may charge an annual fee, in addition to regular dog licensing fees, to register dangerous dogs. [1989 c 26 § 3; 1987 c 94 § 2.]

Severability—1987 c 94: See note following RCW 16.08.070.

16.08.090 Dangerous dogs—Requirements for restraint—Potentially dangerous dogs—Dogs not declared dangerous. (1) It is unlawful for an owner of a dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

(2) Potentially dangerous dogs shall be regulated only by local, municipal, and county ordinances. Nothing in this section limits restrictions local jurisdictions may place on owners of potentially dangerous dogs.

(3) Dogs shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a wilful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime. [1987 c 94 § 3.]

Severability—1987 c 94: See note following RCW 16.08.070.

16.08.100 Dangerous dogs—Confiscation—Conditions—Penalties for owners of dogs that attack—Dog fights, penalty. (1) Any dangerous dog shall be immediately confiscated by an animal control authority if the: (a) Dog is not validly registered under RCW 16.08.080; (b) owner does not secure the liability insurance coverage required under RCW 16.08.080; (c) dog is not maintained in the proper enclosure; (d) dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under physical restraint of the responsible person. In addition, the owner shall be guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021.

(2) If a dangerous dog of an owner with a prior conviction under this chapter attacks or bites a person or another domestic animal, the dog's owner is guilty of a class C felony, punishable in accordance with RCW 9A.20.021. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(3) The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether the dog has previously been declared potentially dangerous or dangerous, shall be guilty of a class C felony punishable in accordance with RCW 9A.20.021. In addition, the dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(4) Any person entering a dog in a dog fight is guilty of a class C felony punishable in accordance with RCW 9A.20.021. [1987 c 94 § 4.]

Severability—1987 c 94: See note following RCW 16.08.070.

Chapter 16.10

DOGS—LICENSING—DOG CONTROL ZONES

Sections

- 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.

Pet animals—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.070.

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 16.24

STOCK RESTRICTED AREAS

Sections

- 16.24.010 Restricted areas—Range areas.
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16.24.010 Restricted areas—Range areas. The county legislative authority 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. No territory so designated shall be less than two square miles in area. 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 cattle, horses, mules, or donkeys to run at large: PROVIDED, That the county legislative authority may designate areas where it shall be unlawful to permit any livestock other than cattle to run at large. [1989 c 286 § 4; 1937 c 40 § 1; 1911 c 25 § 1; RRS § 3068. Prior: 1907 c 230 § 1; 1905 c 91 § 1; R & B § 3166.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.020 Hearing—Notice. *Within sixty days after the taking effect of RCW 16.24.010 through 16.24.065, the county legislative authority 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 county legislative authority 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. [1989 c 286 § 5; 1937 c 40 § 2; 1923 c 33 § 1; 1911 c 25 § 2; RRS § 3069.]

***Reviser's note:** RCW 16.24.010 through 16.24.065 took effect March 1, 1937.

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.030 Order establishing area—Publication.

Within thirty days after the conclusion of any such hearing the county legislative authority 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. [1989 c 286 § 6; 1937 c 40 § 3; 1923 c 33 § 2; 1911 c 25 § 3; RRS § 3070.]

Severability—1989 c 286: See note following RCW 16.04.010.

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 or, violating any provision of this chapter, shall be guilty of a misdemeanor. [1975 c 38 § 1; 1911 c 25 § 4; RRS § 3071.]

16.24.050 Change of boundaries. When the county legislative authority of any county deem[s] 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 legislative authority decides to change the boundary or boundaries of any stock restricted area or areas, it 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. [1989 c 286 § 7; 1937 c 40 § 4; 1923 c 93 § 1; RRS § 3070-1.]

Severability—1989 c 286: See note following RCW 16.04.010.

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 legislative authority shall designate, there shall be erected a road sign bearing the words: "RANGE AREA. WATCH OUT FOR LIVESTOCK." [1989 c 286 § 8; 1937 c 40 § 5; RRS § 3070-2.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.065 Stock at large in restricted areas—Running at large on state or federal land. (1) No person owning or in control of any livestock shall willfully or negligently allow such livestock to run at large in any stock restricted area or 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.

(2) Livestock may run at large upon lands belonging to the state of Washington or the United States only when the owner of the livestock has been granted grazing privileges in writing. [1989 c 286 § 9; 1985 c 415 § 20; 1937 c 40 § 6; RRS § 3070-3. Formerly RCW 16.24.070, part.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.070 Stock on highway right-of-way—Limitations. 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. [1989 c 286 § 10; 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.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.090 Animals at large—Limitations—Defense. Except as provided in chapter 16.24 RCW, a person who owns or has possession, charge, or control of horses, mules, donkeys, cattle, goats, sheep or swine shall not negligently allow them to run at large at any time or within any territory. It shall not be necessary for any person to fence against such animals, and it shall be no defense to any action or proceedings brought pursuant to this chapter or chapter 16.04 RCW that the party injured by or restraining such animals did not have his or her lands enclosed by a lawful fence: PROVIDED, That such animals may be driven upon the highways while in charge of sufficient attendants. [1989 c 286 § 14; 1911 c 25 § 5; RRS § 3072. Formerly RCW 16.12.010, part.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.100 Prosecution—Proof of ownership. In any prosecution under chapter 16.24 RCW 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. [1989 c 286 § 3; 1895 c 124 § 2; RRS § 3086. Formerly RCW 16.16.020.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.110 Public nuisance—Impounding. Any horses, mules, donkeys, or cattle of any age running at large or trespassing in violation of chapter 16.24 RCW as now or hereafter amended, which are not restrained as provided by RCW 16.04.010, are declared to be a public nuisance. The sheriff of the county where found and the nearest brand inspector shall have authority to impound such animals which are not restrained as provided by RCW 16.04.010. [1989 c 286 § 11; 1985 c 415 § 16; 1979 c 154 § 6; 1975 1st ex.s. c 7 § 14; 1951 c 31 § 2. Formerly RCW 16.13.020.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1979 c 154: See note following RCW 15.49.330.

16.24.120 Impounding—Procedure. Upon taking possession of any livestock at large contrary to the provisions of *RCW 16.13.020, or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the director, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock

market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded an animal in accordance with this section, he 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. [1989 c 286 § 12; 1979 c 154 § 7; 1975 1st ex.s. c 7 § 15; 1951 c 31 § 3. Formerly RCW 16.13.030.]

***Reviser's note:** RCW 16.13.020 was recodified as RCW 16.24.110 pursuant to 1989 c 286 § 18.

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1979 c 154: See note following RCW 15.49.330.

16.24.130 Impounding—Notice—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 public livestock market sale or other public 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. [1995 c 374 § 69; 1975 1st ex.s. c 7 § 16; 1951 c 31 § 4. Formerly RCW 16.13.040.]

Effective date—1995 c 374 §§ 69, 70, and 72-79: "Sections 69, 70, and 72 through 79 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 374 § 82.]

16.24.140 Impounding—Owner to pay costs. Upon claiming any animal impounded under this chapter, the owner shall pay all costs of transportation, advertising, legal proceedings, and keep of the animal, except as provided under RCW 16.04.100. [1994 c 263 § 2; 1989 c 286 § 13; 1951 c 31 § 5. Formerly RCW 16.13.050.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.150 Sale of impounded animal—Retroactive effect. 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 public livestock market sale to be held at the sales yard where impounded, provided that in the director's discretion the department of agriculture may otherwise cause the animal to be sold at public sale.

The legislature intends this to be a clarification of existing law; therefore, this section shall have retroactive effect as of December 1, 1994. [1995 c 374 § 70; 1975 1st ex.s. c 7 § 17; 1951 c 31 § 6. Formerly RCW 16.13.060.]

Effective date—1995 c 374 §§ 69, 70, and 72-79: See note following RCW 16.24.130.

16.24.160 Conduct of sale—Disposition of proceeds.

The proceeds of the sale of animals impounded under this chapter, after deducting the costs of sale, shall be impounded in the estray 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. [1985 c 415 § 17; 1951 c 31 § 7. Formerly RCW 16.13.070.]

16.24.170 Purchase of animal, restrictions. 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. Formerly RCW 16.13.080.]

16.24.180 Castration or gelding of stock 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. It shall be lawful for any person to take up or capture and geld, at the risk of the owner, between April 1 and September 30 of any year, any stud horse or jackass or any male mule above the age of eighteen months found running at large out of the enclosed grounds of the owner or keeper. 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 animal, or causing it 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 reasonable costs of keeping of said animal, 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 a reasonable sum for such act of castration, 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 the animal without giving any notice to the owner or keeper whatever. For purposes of this section, geld and castrate shall have the same meaning. [1989 c 286 § 15; 1965 c 66 § 4; 1890 p 453 § 1; RRS § 3081. Formerly RCW 16.20.010.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.190 Bull breed restrictions. It shall be unlawful for any person, firm, association or corporation to turn upon or allow to run at large on any range area in this

state any bull other than a registered bull of a recognized beef breed. All persons running cattle in common on any range area may, however, agree to run any purebred or crossbred bull of any breed, registered or unregistered, as they may deem appropriate for their area. [1986 c 177 § 1; 1985 c 415 § 18; 1917 c 111 § 1; RRS § 3082. Formerly RCW 16.20.020.]

16.24.200 Bull ratio restrictions. Before any person, firm, association or corporation turns upon a range area in this state any female cattle of breeding age of more than fifteen in number, they shall procure and turn with said female breeding cattle one registered bull of recognized beef breed for every forty females or fraction thereof of twenty-five or over. All persons running cattle in common on any range area may, however, agree to any other proportion of bulls to female cattle of breeding age as they may deem appropriate for their area. [1986 c 177 § 2; 1917 c 111 § 2; RRS § 3083. Formerly RCW 16.20.030.]

16.24.210 Bull breed and ratio restrictions not applicable to counties west of Cascades. RCW 16.24.190 and 16.24.200 shall not apply to counties lying west of the summit of the Cascade mountains. [1989 c 286 § 17; 1985 c 415 § 19. Formerly RCW 16.20.035.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.220 Separating estrays from herd. 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. [1989 c 286 § 16; 1987 c 202 § 181; 1969 ex.s. c 199 § 14; Code 1881 § 2537; RRS § 3050. Prior: 1869 pp 408, 409 §§ 1, 2. Formerly RCW 16.28.160.]

Severability—1989 c 286: See note following RCW 16.04.010.

Intent—1987 c 202: See note following RCW 2.04.190.

16.24.230 Moving another's livestock from range. No person shall remove any livestock belonging to another from the range on which they are permitted to run at large, without the prior consent of the owner thereof. The owner of any livestock may move his or her own livestock, together with such other livestock as cannot be separated from his or her own, to the nearest corral, or other facility in order to separate his or her own livestock, if the other livestock are returned to the same location from which they were moved within twenty-four hours. [1985 c 415 § 21; 1891 c 12 § 1; RRS § 3048. Formerly RCW 16.28.170, part. Formerly RCW 16.28.165.]

Chapter 16.36

ANIMAL HEALTH

(Formerly: Diseases—Quarantine—Garbage feeding)

Sections

- 16.36.005 Definitions.
- 16.36.010 Quarantine—Hold order.
- 16.36.020 Powers of director.
- 16.36.025 Recovery of costs.
- 16.36.040 Rules—Prevention—Inspections and tests—Reportable disease—Federal regulations.
- 16.36.050 Unlawful actions—Importation—Required certificates—Intentional or willful misconduct.
- 16.36.060 Tests or examinations—Entry onto premises—Unlawful conduct.
- 16.36.070 Danger of infection—Emergencies.
- 16.36.080 Veterinarians and others to report diseases—Director's duties—Unlawful importation.
- 16.36.082 Infected or exposed animals—Unlawful to transfer or expose other animals.
- 16.36.084 Duty to report infection or exposure to disease—Unlawful conduct.
- 16.36.086 Negligence of owner of infected livestock—Liability.
- 16.36.090 Destruction of diseased or quarantined animals.
- 16.36.096 Destruction of animals—Payment of indemnity.
- 16.36.098 Quarantine, hold, or destruct order—Written request for hearing.
- 16.36.100 Cooperation with other governmental agencies.
- 16.36.105 Swine, garbage feeding, license—Application—Fee—Inspection.
- 16.36.110 Violations, gross misdemeanor—Injunction—Denial, revocation, or suspension of license.
- 16.36.128 Application of Title 77 RCW.

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.36.005 Definitions. As used in this chapter:

"Animal" means all members of the animal kingdom except humans, fish, and insects. However, "animal" does not mean noncaptive wildlife as defined in RCW 77.08.010(16), except as used in RCW 16.36.050(1) and 16.36.080 (1), (2), (3), and (5).

"Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals.

"Farm-raised fish" means fish raised by aquaculture as defined in RCW 15.85.020. Farm-raised fish are considered to be a part of animal agriculture; however, disease inspection, prevention, and control programs and related activities for farm-raised fish are administered by the department of fish and wildlife under chapter 75.58 RCW.

"Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal, or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the environment.

"Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

"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.

"Deputized state veterinarian" means a Washington state licensed and accredited veterinarian appointed and compensated by the director according to state law and department policies.

"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.

"Herd or flock plan" means a written management agreement between the owner of a herd or flock and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the area veterinarian-in-charge of the United States department of agriculture, animal and plant health inspection service, veterinary services in which each participant agrees to undertake actions specified in the herd or flock plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd or flock and to work toward eradicating the disease in the infected herd or flock.

"Hold order" means an order by the director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation by the director of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products.

"Infectious agent" means an organism including viruses, rickettsia, bacteria, fungi, protozoa, helminthes, or prions that is capable of producing infection or infectious disease.

"Infectious disease" means a clinical disease of man or animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

"Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

"Person" means a person, persons, firm, or corporation.

"Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering this state, as may be directed in an order by the director.

"Reportable disease" means a disease designated by rule by the director as reportable to the department by veterinarians and others made responsible to report by statute.

"Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals. [1998 c 8 § 1; 1987 c 163 § 1; 1953 c 17 § 1.]

16.36.010 Quarantine—Hold order. (1) The director shall supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state.

(2) The director may issue a quarantine order and enforce the quarantine of any animal or its reproductive

products that is affected with or has been exposed to disease, either within or outside the state. The quarantine shall remain in effect as long as the director deems necessary.

(3) The director may issue a hold order when:

(a) Overt disease or exposure to disease in an animal is not immediately obvious but there is reasonable cause to investigate whether an animal is diseased or has been exposed to disease;

(b) Import health papers, permits, or other transportation documents required by law or rule are not complete or are suspected to be fraudulent; or

(c) Further transport of an animal would jeopardize the well-being of the animal or other animals in Washington state.

A hold order is in effect for seven days and expires at midnight on the seventh day from the date of the hold order. A hold order may be replaced with a quarantine order for the purpose of animal disease control.

(4) Any animal or animal reproductive product placed under a quarantine or hold order shall be kept separate and apart from other animals designated in the instructions of the quarantine or hold order, and shall not be allowed to have anything in common with other animals.

(5) The expenses of handling and caring for any animal or animal reproductive product placed under a quarantine or hold order are the responsibility of the owner.

(6) The director has authority over the quarantine or hold area until the quarantine or hold order is released or the hold order expires.

(7) Any animal or animal reproductive product placed under a quarantine or hold order may not be moved, transported, or sold without written approval from the director or until the quarantine or hold order is released, or the hold order expires.

(8) The director may administer oaths and examine witnesses and records in the performance of his or her duties to control diseases affecting animals. [1998 c 8 § 2; 1927 c 165 § 2; RRS § 3111. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

16.36.020 Powers of director. (1) The director shall enforce and administer the provisions of this chapter pertaining to garbage feeding.

(2) The director has the authority to regulate the sale, distribution, and use of veterinary biologics in the state and may adopt rules to restrict the sale, distribution, or use of any veterinary biologic in any manner necessary to protect the health and safety of the public and the state's animal population.

(3) The director has the authority to license and regulate the activities of veterinary laboratories that do not have a veterinarian licensed under chapter 18.92 RCW present within the management or staff of the veterinary laboratory. The director may adopt rules to regulate these laboratories in any manner necessary to protect the health and safety of the public and the public's animals. [1998 c 8 § 3; 1987 c 163 § 2; 1979 c 154 § 8; 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.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.025 Recovery of costs. The director may collect moneys to recover the reasonable costs of printing and distributing certificates and other supplies to veterinarians. [1998 c 8 § 19.]

16.36.040 Rules—Prevention—Inspections and tests—Reportable disease—Federal regulations. (1) The director may adopt and enforce rules necessary to carry out the purpose and provisions of this chapter, and including:

(a) Preventing the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting animals in this state;

(b) Governing the inspection and testing of all animals within or about to be imported into this state; and

(c) Designating any disease as a reportable disease.

(2) Rules to prevent the introduction or spread of infectious, contagious, communicable, or dangerous diseases affecting animals in this state may differ from federal regulations by being more restrictive. [1998 c 8 § 4; 1979 c 154 § 10; 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.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.050 Unlawful actions—Importation—Required certificates—Intentional or willful misconduct. It is unlawful for any person to:

(1) Bring into this state for any purpose any animals without first having secured an official health certificate or certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin that the animals meet the health requirements of the state of Washington. This subsection does not apply to livestock imported into this state for immediate slaughter, or other animals exempted by rule;

(2) Divert en route to other than an approved, inspected feedlot for subsequent slaughter or to sell for other than immediate slaughter or to fail to slaughter within seven calendar days after arrival, any animal imported into this state for immediate slaughter;

(3) Intentionally falsely make, complete, alter, use, or sign an animal health certificate, certificate of veterinary inspection, or official written animal health document of the department;

(4) Willfully hinder, obstruct, or resist the director, or any peace officer or deputized state veterinarian acting under him or her, when engaged in the performance of their duties; or

(5) Willfully fail to comply with or to violate any rule or order adopted by the director under this chapter. [1998 c 8 § 5; 1979 c 154 § 11; 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.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.060 Tests or examinations—Entry onto premises—Unlawful conduct. The director has the authority to enter the animal premises of any animal owner at any reasonable time to make tests on or examinations of any animals for disease conditions when there is reasonable evidence that animals on the premises are infected with or have been exposed to a reportable disease. It is unlawful for

any person to interfere with the tests or examinations, or to alter any segregation or identification systems made in connection with the tests or examinations. [1998 c 8 § 6; 1985 c 415 § 2; 1979 c 154 § 12; 1947 c 172 § 5; 1927 c 165 § 6; Rem. Supp. 1947 § 3115. Prior: 1895 c 167 § 3.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.070 Danger of infection—Emergencies. When any local governing body notifies the director of the presence or probable danger of infection from any animal diseases, the director, state veterinarian, or a deputized state veterinarian shall respond immediately and take appropriate action. In case of an emergency, the director may appoint deputies or assistants with equal power to act. [1998 c 8 § 7; 1947 c 172 § 6; 1927 c 165 § 7; Rem. Supp. 1947 § 3116. Prior: 1895 c 167 § 4.]

16.36.080 Veterinarians and others to report diseases—Director's duties—Unlawful importation. (1) Any person licensed to practice veterinary medicine, surgery, and dentistry in this state, veterinary laboratories, and others designated by this chapter shall immediately report in writing or by telephone, facsimile, or electronic mail to the director the existence or suspected existence of any reportable disease among animals within the state.

(2) Persons using their own diagnostic services must report any reportable disease among animals within the state to the director.

(3) The director shall investigate and/or maintain records of all cases of reportable diseases among animals within this state.

(4) The director may require appropriate treatment of any animal affected with, suspected of being affected with, or that has been exposed to any reportable disease. The owner may dispose of the animal rather than treating the animal as required by the director.

(5) It is unlawful for any person to import any animal infected with or exposed to a reportable disease without a permit from the director. [1998 c 8 § 8; 1947 c 172 § 7; 1927 c 165 § 8; Rem. Supp. 1947 § 3117.]

16.36.082 Infected or exposed animals—Unlawful to transfer or expose other animals. (1) It is unlawful for any person to sell, exchange, or give away any animal that he or she knows:

(a) Is infected with any contagious, infectious, or communicable disease;

(b) Has been exposed to any contagious, communicable, or infectious disease within the previous thirty days; or

(c) Has been treated for any condition within the previous thirty days;

without notifying the purchaser or person taking possession of the animal of the infection, exposure, or treatment unless the legal withdrawal period for any treatment has been met or exceeded.

(2) It is unlawful for any owner or person in possession of any animal having any contagious, communicable, or infectious disease to knowingly:

(a) Turn out the animal onto enclosed lands adjoining the enclosed lands of another that are kept for pasture or

otherwise used for raising animals without notifying the owner of the enclosed lands; or

(b) Stable the animal or allow the animal to be stabled in any barn with other animals without notifying the other owners. [1998 c 8 § 14; 1927 c 165 § 26; RRS § 3135. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.130.]

16.36.084 Duty to report infection or exposure to disease—Unlawful conduct. Any person owning or having in his or her control any livestock which become infected with scrapie or another transmissible spongiform encephalopathy (TSE) or which have been exposed to such disease, shall immediately report the disease or exposure to the director. It is unlawful for any person to fail to report or to attempt to conceal the existence of any such disease. [1998 c 8 § 15; 1927 c 165 § 28; RRS § 3137. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.140.]

16.36.086 Negligence of owner of infected livestock—Liability. When any livestock affected with any contagious, infectious, or communicable disease mingle with any healthy livestock belonging to another person, through the fault or negligence of the owner of the diseased livestock or his or her agent, the owner is liable for all damages sustained by the owner of the healthy livestock. [1998 c 8 § 16; 1927 c 165 § 32; RRS § 3141. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.160.]

16.36.090 Destruction of diseased or quarantined animals. When public welfare demands, the director may order the slaughter or destruction of any animal affected with or exposed to any contagious, infectious, or communicable disease that is affecting or may affect the health of the state's animal population. The director may order destruction of any animal held under quarantine when the owner of the animal fails or refuses to follow a herd or flock plan. The director shall give a written order directing an animal be destroyed by or under the direction of the state veterinarian. [1998 c 8 § 9; 1985 c 415 § 3; 1979 c 154 § 13; 1947 c 172 § 8; 1927 c 165 § 9; Rem. Supp. 1947 § 3118. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.096 Destruction of animals—Payment of indemnity. In ordering the slaughter or destruction of any animal, the director may pay an indemnity in an amount not to exceed seventy-five percent of the appraised or salvage value of the animal ordered slaughtered or destroyed. The actual indemnity amount shall be established by the director by rule. Payment of indemnity does not apply to an animal: (1) Belonging to the federal government or any of its agencies, this state or any of its agencies, or any municipal corporation; or (2) that has been brought into this state in violation of this chapter or rules adopted under this chapter. [1998 c 8 § 10; 1985 c 415 § 4; 1963 ex.s. c 8 § 1.]

16.36.098 Quarantine, hold, or destruct order—Written request for hearing. Any person whose animal or

animal reproductive products are placed under a quarantine, hold, or destruct order may request a hearing. The request for a hearing must be in writing and filed with the director. Any hearing will be held in conformance with RCW 34.05.422 and 34.05.479. [1998 c 8 § 17.]

16.36.100 Cooperation with other governmental agencies. The director is authorized to 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 and to promote consistency of regulation. [1998 c 8 § 11; 1927 c 165 § 10; RRS § 3119. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

16.36.105 Swine, garbage feeding, license—Application—Fee—Inspection. No person shall feed garbage to swine without first obtaining a license from the director. The license expires on June 30th of each year. Application for a license shall be accompanied by a fee of ten dollars which shall be credited to the general fund. The license is nontransferable and a separate license is required for each place of business if an operator has more than one feeding station.

Upon receipt of an application for a license to feed garbage, the director shall inspect the premises and determine whether the applicant meets the requirements of 9 CFR Chapter 1 Part 166 as adopted by rule and any other rules adopted under this chapter. Upon approval of the application by the director and compliance with the provisions of this section, the applicant shall be issued a license. This section does not apply to any person feeding garbage from his or her own domestic household. [1998 c 8 § 12; 1953 c 17 § 4.]

Feeding of carcasses to swine: RCW 16.68.150.

16.36.110 Violations, gross misdemeanor—Injunction—Denial, revocation, or suspension of license. (1) Any person who violates any provision of this chapter or the rules adopted under this chapter shall be guilty of a gross misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

(2) The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted under this chapter in the superior court of Thurston county or of the county in which such violation occurs notwithstanding the existence of other remedies at law.

(3) The director may deny, revoke, or suspend any license issued under this chapter for any failure or refusal to comply with this chapter or rules adopted under this chapter. Upon notice by the director to deny, revoke, or suspend a license, a person may request a hearing under chapter 34.05 RCW. [1998 c 8 § 13; 1989 c 354 § 35; 1981 c 296 § 14; 1957 c 22 § 5. Prior: 1953 c 17 § 8; 1927 c 165 § 33; RRS § 3142.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1981 c 296: See note following RCW 15.08.010.

16.36.128 Application of Title 77 RCW. Certain animals defined in this chapter as livestock or animal may also meet the definition of wildlife contained in Title 77 RCW. This chapter does not allow importation, possession,

or uses of animals that are in violation of Title 77 RCW or the rules adopted under that title, nor does it relieve the owners or possessors of wildlife from full compliance with the requirements of Title 77 RCW or the rules adopted under that title. Rules adopted by the director shall not allow importation, possession, or uses of animals that are in violation of Title 77 RCW or the rules adopted under that title. [1998 c 8 § 18.]

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—Use.

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

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—Use. The director may, following a public hearing, establish a schedule of fees for services performed in carrying out such diagnostic service program. All fees collected under this provision shall be retained by the director of agriculture to be spent only for carrying out the purposes of this chapter. [1986 c 203 § 6; 1969 c 100 § 6.]

Severability—1986 c 203: See note following RCW 15.17.245.

Chapter 16.48

INSPECTION OF MEAT STORAGE OR SALE LOCATIONS

(Formerly: 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:** For "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: For "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: For "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: For "this act," see note following RCW 16.48.312.

Chapter 16.49 CUSTOM SLAUGHTERING

Sections	
16.49.435	Definitions.
16.49.440	Custom slaughtering and custom meat licenses— Generally—Equipment inspection.
16.49.441	Custom farm slaughterers—Prelicense inspections.
16.49.442	Additional fee for late renewal—Exception.
16.49.444	Denial, suspension, probation, revocation of license— Grounds.
16.49.451	Custom farm slaughterer—Transport of offal.
16.49.454	Establishment of need—Contents of application—Hearing.
16.49.500	Washington State University laboratories exemption— Inspection, stamping.
16.49.510	Civil and criminal penalty.
16.49.610	Custom meat facilities—Conditions for preparation of in- spected and uninspected meat and sale of inspected meat.
16.49.630	Custom meat facilities—License—Generally.
16.49.635	Custom meat facilities—Prelicense inspections.
16.49.670	Custom meat facilities—Ordinances may be more restrictive.
16.49.680	Rules.
16.49.690	Inspections.

16.49.700	Uninspected meat or meat food products—Unlawful to sell, trade, or give away—Revocation of license for violation.
16.49.710	Violations of chapter or rules—Investigation by director— Subpoenas.

16.49.435 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 the director's designee.

(3) "Custom farm slaughterer" means any person licensed under this chapter who may under such license engage in the business of slaughtering meat food animals only for the consumption of the owner thereof through the use of an approved mobile unit under such conditions as may be prescribed by the director.

(4) "Custom slaughtering establishment" means the facility operated by any person licensed under this chapter who may under such license engage in the business of slaughtering meat food animals only for the consumption of the owner thereof at a fixed location under such conditions as may be prescribed by the director.

(5) "Custom meat facility" means the facility operated by any person licensed under this chapter who may under such license engage in the business of preparing uninspected meat for the sole consumption of the owner of the uninspected meat being prepared. Operators of custom meat facilities may also prepare inspected meat for household users only under such conditions as may be prescribed by the director and may sell such prepared inspected meat to household users only. Operators of custom meat facilities may also sell prepackaged inspected meat to any person, provided the prepackaged inspected meat is not prepared in any manner by the operator and the operator does not open or alter the original package that the inspected meat was placed in.

(6) "Inspected meat" means the carcasses or parts thereof of meat food animals which have been slaughtered and inspected at establishments subject to inspection under chapter 16.49A RCW or a federal meat inspection act.

(7) "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.

(8) "Household user" means the ultimate consumer, the members of the consumer's household, and his or her nonpaying guests and employees.

(9) "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.

(10) "Meat food animal" means cattle, swine, sheep, or goats.

(11) "Official establishment" means an establishment operated for the purpose of slaughtering meat food animals for sale or use as human food in compliance with the federal meat inspection act (21 U.S.C. Sec. 71 et seq.).

(12) "Prepared" means canned, salted, rendered, boned, cut up or otherwise manufactured, or processed. [1987 c 77 § 4.]

Savings—1987 c 77: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or

repealed in this act or under any rule, regulation, or order adopted under those sections, and does not affect any proceeding instituted under those sections." [1987 c 77 § 12.]

16.49.440 Custom slaughtering and custom meat licenses—Generally—Equipment inspection. It shall be unlawful for any person to act as a custom farm slaughterer or to operate a custom slaughtering establishment or custom meat facility without first obtaining a license from the director. The license shall be an annual license and shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. For custom farm slaughterers, a separate license shall be required for each mobile unit. Each custom slaughtering establishment and custom meat facility shall also require a separate license. Application for a license shall be made on a form prescribed by the director of agriculture and accompanied by a twenty-five dollar annual license fee. The application shall include the full name and address of the applicant. If the applicant is a partnership or corporation, the application shall include the full name and address of each partner or officer. The application shall further state the principal business address of the applicant in the state or elsewhere and the name of a resident of 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 of agriculture. The license shall be issued by the director upon his satisfaction that the 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 adopted hereunder. The director of agriculture shall also provide for the periodic inspection of equipment used by licensees to assure compliance with the provisions of this chapter and the rules adopted hereunder. [1991 c 109 § 4; 1987 c 77 § 1; 1985 c 415 § 5; 1959 c 204 § 44.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.441 Custom farm slaughterers—Preliminary inspections. Before issuing any license to operate as a custom farm slaughterer, the director shall inspect the applicant's mobile unit and slaughtering equipment and only upon the director's satisfaction that the applicant's mobile unit and equipment is properly constructed, has the proper sanitary and mechanical equipment, and is capable of being maintained in a sanitary manner as required under this chapter and the rules adopted hereunder shall the applicant be issued a license. [1987 c 77 § 6.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.442 Additional fee for late renewal—Exception. If the application for the renewal of any license provided for under this chapter is not filed prior to the expiration date, 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 the additional fee shall not be charged if the applicant furnishes an affidavit certifying that the applicant has not carried on the activity for which the applicant was licensed under this chapter subsequent to the

expiration of the applicant's license. [1991 c 109 § 5; 1985 c 415 § 11.]

16.49.444 Denial, suspension, probation, revocation of license—Grounds. The director of agriculture may, subsequent to a hearing under chapter 34.05 RCW, deny, suspend, establish conditions of probation for a designated period of time, or revoke any license required under this chapter if it is determined 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 adopted hereunder, or any lawful order of the department of agriculture;

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested under this chapter; or

(3) Refused the director of agriculture access to any facilities or parts of the facilities subject to this chapter. [1994 c 128 § 1; 1985 c 415 § 12.]

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.]

16.49.454 Establishment of need—Contents of application—Hearing. No person shall operate a custom slaughtering establishment without first establishing the need for such an establishment. In addition to the requirements under RCW 16.49.440, applications to operate custom slaughtering establishments 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.

(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 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 34.05 RCW concerning adjudicative proceedings. 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. [1989 c 175 § 53; 1987 c 77 § 2; 1961 c 91 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—1987 c 77: See note following RCW 16.49.435.

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 Civil and criminal penalty. If the director finds that a person has committed a violation of any provision of this chapter or rules adopted under this chapter, the director may impose upon and collect from the violator, a civil penalty not exceeding one thousand dollars per violation per day. Each violation is a separate and distinct offense.

The violation of any provision of this chapter or rules adopted hereunder shall constitute a gross misdemeanor.

Both a civil penalty and a criminal penalty may not be imposed for the same violation. [1994 c 128 § 2; 1985 c 415 § 6; 1959 c 204 § 51.]

16.49.610 Custom meat facilities—Conditions for preparation of inspected and uninspected meat and sale of inspected meat. Inspected and uninspected meat may only be prepared by a 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) 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 as otherwise prescribed by the director.

(7) Any custom meat facility shall comply with sanitation rules and regulations promulgated by the director. [1987 c 77 § 3; 1985 c 415 § 7; 1971 ex.s. c 98 § 3.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.630 Custom meat facilities—License—Generally. 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 annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1991 c 109 § 6; 1971 ex.s. c 98 § 5.]

16.49.635 Custom meat facilities—Preliminary inspections. Before issuing any license to operate a custom meat facility, the director shall inspect the applicant's premises and only upon the director's satisfaction that the applicant's facility and equipment is properly constructed, has the proper sanitary and mechanical equipment, and is capable of being maintained in a sanitary manner as required under this chapter and the rules adopted hereunder shall the applicant be issued a license. [1987 c 77 § 7.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.670 Custom meat facilities—Ordinances may be more restrictive. The provisions of this chapter relating to custom meat facilities and RCW 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. [1987 c 77 § 11; 1971 ex.s. c 98 § 9.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.680 Rules. To ensure the sanitary slaughtering of meat food animals and handling of meat and meat food products by licensees under this chapter, the director may adopt such rules as the director finds necessary to protect public health and safety. To ensure the identification of meat food animals slaughtered by licensees and the meat and meat food products handled by licensees, both as to ownership and as to whether the product is uninspected meat or inspected meat, the director may adopt such rules as the director finds necessary. The director may also adopt such other rules as the director finds necessary to carry out this chapter. [1987 c 77 § 5.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.690 Inspections. To ensure that licensees under this chapter maintain proper sanitary practices and comply with all the provisions of this chapter and the rules adopted hereunder, the director may inspect the mobile unit of any custom farm slaughterer and the premises of any custom slaughtering establishment or custom meat facility at any reasonable time. No person may interfere with the director in the performance of his or her duties under this chapter or the rules adopted hereunder. [1987 c 77 § 8.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.700 Uninspected meat or meat food products—Unlawful to sell, trade, or give away—Revocation of license for violation. It is unlawful for any person to

sell, trade, or give away uninspected meat or the meat food products that may be derived therefrom. Any violation of this section by a licensee under this chapter shall be sufficient reason for the revocation of the licensee's license. [1987 c 77 § 9.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.710 Violations of chapter or rules—Investigation by director—Subpoenas. The director may investigate any violation or possible violation of this chapter or any rule adopted under this chapter. In the furtherance of any such investigation, the director may issue subpoenas to compel the attendance of witnesses or the production of books or documents anywhere in the state. [1987 c 77 § 10.]

Savings—1987 c 77: See note following RCW 16.49.435.

Chapter 16.49A

WASHINGTON MEAT INSPECTION ACT

Sections

- 16.49A.010 Short title.
- 16.49A.020 Declaration of purpose.
- 16.49A.030 Definitions govern construction.
- 16.49A.040 "Department."
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- 16.49A.120 "Animal food manufacturer."
- 16.49A.130 "Meat food product."
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- 16.49A.150 "Capable of use as human food."
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- 16.49A.180 "Label."
- 16.49A.190 "Labeling."
- 16.49A.200 "Uniform Washington food, drug, and cosmetic act."
- 16.49A.210 "Pesticide chemical", "food additive", "color additive", "raw agricultural commodity."
- 16.49A.220 "Official mark."
- 16.49A.230 "Official inspection legend."
- 16.49A.240 "Official certificate."
- 16.49A.250 "Official device."
- 16.49A.255 "Intrastate commerce."
- 16.49A.260 Examination of animals before entry into slaughtering establishment—Disposition of diseased animals.
- 16.49A.270 Examination and inspection of carcasses—Marking—Destruction of adulterated carcasses—Reinspection—Removal of inspectors, when.
- 16.49A.280 Application of foregoing provisions—Director may limit entry of articles into establishments.
- 16.49A.290 Inspection of meat food products—Marking—Destruction of adulterated products.
- 16.49A.300 Containers, closing or sealing—Labeling requirements—False or misleading labels—Hearing—Appeal from director's determination.
- 16.49A.310 Inspection of establishments for sanitary conditions—Rules and regulations to maintain.
- 16.49A.320 Inspections to be made during nighttime as well as daytime.
- 16.49A.330 Prohibited practices.
- 16.49A.340 Unlawful acts as to official devices, labels, certificates, etc.
- 16.49A.350 Restrictions on sale, transportation, etc., of equine meat or meat products.
- 16.49A.360 Bribing inspector or other official—Acceptance of bribe—Penalty.
- 16.49A.370 Exemptions from inspection requirements.

- 16.49A.380 Director may prescribe regulations for storage and handling of meats and meat food products.
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- 16.49A.640 Rules and regulations subject to administrative procedure act.
- 16.49A.650 Continuation of rules adopted pursuant to repealed chapter.
- 16.49A.900 Portions of chapter conflicting with federal requirements—Construction
- 16.49A.910 Severability—1969 ex.s. c 145.
- 16.49A.920 Chapter cumulative and nonexclusive.

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.]

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

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.]

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

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.

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

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.]

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

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.]

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.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 34.05 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 34.05 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—Adulteration and misbranding. (1) Except as provided in subsection (2) of this section, the provisions of this chapter 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 rules adopted under the provisions of this chapter.

(2) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to operations that are exempted under this section. [1993 c 166 § 1; 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 34.05 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 34.05 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 34.05 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

Sections

16.50.100	Declaration of policy.
16.50.110	Definitions.
16.50.120	Humane methods for bleeding or slaughtering livestock required.
16.50.130	Administration of chapter—Rules.
16.50.140	Manually operated hammer, sledge or poleaxe—Declared inhumane.
16.50.150	Religious freedom—Ritual slaughter defined as humane.
16.50.160	Injunctions against violations.
16.50.170	Penalty for violations.
16.50.900	Severability—1967 c 31.

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 34.05 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

Sections

16.52.011 Definitions—Principles of liability.

16.52.015 Enforcement—Law enforcement agencies and animal care and control agencies.

16.52.020 Humane societies—Enforcement authority.

16.52.025 Humane societies—Animal control officers.

16.52.080 Transporting or confining in unsafe manner—Penalty.

16.52.085 Removal of animals for feeding—Examination—Notice—Euthanasia.

16.52.090 Docking horses—Misdemeanor.

16.52.095 Cutting ears—Misdemeanor.

16.52.100 Confinement without food and water—Intervention by others.

16.52.110 Old or diseased animals at large.

16.52.117 Animal fighting—Owners, trainers, spectators—Exceptions.

16.52.165 Punishment—Conviction of misdemeanor.

16.52.180 Limitations on application of chapter.

16.52.185 Exclusions from chapter.

16.52.190 Poisoning animals.

16.52.193 Poisoning animals—Strychnine sales—Records—Report on suspected purchases.

16.52.195 Poisoning animals—Penalty.

16.52.200 Sentences—Forfeiture of animals—Liability for costs—Civil penalty—Education, counseling.

16.52.205 Animal cruelty in the first degree.

16.52.207 Animal cruelty in the second degree.

16.52.210 Destruction of animal by law enforcement officer—Immunity from liability.

16.52.220 Transfers of mammals for research—Certification requirements—Pet animals.

16.52.230 Remedies not impaired.

16.52.300 Dogs or cats used as bait—Seizure—Limitation.

Cruelty to stock in transit: RCW 81.56.120.

Pet animals—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.070.

16.52.011 Definitions—Principles of liability. (1) Principles of liability as defined in chapter 9A.08 RCW apply to this chapter.

(2) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(a) "Animal" means any nonhuman mammal, bird, reptile, or amphibian.

(b) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control.

(c) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in (e) of this subsection and RCW 16.52.025.

(d) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness.

(e) "Humane officer" means any individual employed, contracted, or appointed by an animal care and control agency or humane society as authorized under RCW 16.52.025.

(f) "Law enforcement agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(g) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age and species and sufficient to provide a reasonable level of nutrition for the animal.

(h) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal.

(i) "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities.

(j) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110. [1994 c 261 § 2.]

Finding—Intent—1994 c 261: "The legislature finds there is a need to modernize the law on animal cruelty to more appropriately address the nature of the offense. It is not the intent of this act to remove or decrease any of the exemptions from the statutes on animal cruelty that now apply to customary animal husbandry practices, state game or fish laws, rodeos, fairs under chapter 15.76 RCW, or medical research otherwise authorized under federal or state law. It is the intent of this act to require the enforcement of chapter 16.52 RCW by persons who are accountable to elected officials at the local and state level." [1994 c 261 § 1.]

16.52.015 Enforcement—Law enforcement agencies and animal care and control agencies. (1) Law enforcement agencies and animal care and control agencies may enforce the provisions of this chapter. Animal care and control agencies may enforce the provisions of this chapter in a county or city only if the county or city legislative authority

has entered into a contract with the agency to enforce the provisions of this chapter.

(2) Animal control officers enforcing this chapter shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers who enforce this chapter and other criminal laws of the state of Washington.

(3) Animal control officers have the following enforcement powers when enforcing this chapter:

(a) The power to issue citations based on probable cause to offenders for misdemeanor and gross misdemeanor violations of this chapter or RCW 9.08.070 or 81.56.120;

(b) The power to cause a law enforcement officer to arrest and take into custody any person the animal control officer has probable cause to believe has committed or is committing a violation of this chapter or RCW 9.08.070 or 81.56.120. Animal control officers may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;

(c) The power to carry nonfirearm protective devices for personal protection;

(d) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to investigate violations of this chapter or RCW 9.08.070 or 81.56.120, and to seize evidence of those violations.

(4) Upon request of an animal control officer who has probable cause to believe that a person has violated this chapter or RCW 9.08.070 or 81.56.120, a law enforcement agency officer may arrest the alleged offender. [1994 c 261 § 3.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.020 Humane societies—Enforcement authority. Any citizens of the state of Washington incorporated under the laws of this state as a humane society or as a society for the prevention of cruelty to animals may enforce the provisions of this chapter through its animal control officers subject to the limitations in RCW 16.52.015 and 16.52.025. 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. [1994 c 261 § 4; 1973 1st ex.s. c 125 § 1; 1901 c 146 § 1; RRS § 3184.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.025 Humane societies—Animal control officers. Trustees of humane societies incorporated pursuant to RCW 16.52.020 may appoint society members to act as animal control officers. The trustee appointments shall be in writing. The appointment shall be effective in a particular county only if an appointee obtains written authorization from the superior court of the county in which the appointee seeks to enforce this chapter. To obtain judicial authorization, an appointee seeking judicial authorization on or after June 9, 1994, shall provide evidence satisfactory to the

judge that the appointee has successfully completed training which has prepared the appointee to assume the powers granted to animal control officers pursuant to RCW 16.52.015. The trustees shall review appointments every three years and may revoke an appointment at any time by filing a certified revocation with the superior court that approved the appointment. Authorizations shall not exceed three years or trustee termination, whichever occurs first. To qualify for reappointment when a term expires on or after June 9, 1994, the officer shall obtain training or satisfy the court that the officer has sufficient experience to exercise the powers granted to animal control officers pursuant to RCW 16.52.015. [1994 c 261 § 5.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.080 Transporting or confining in unsafe manner—Penalty. Any person who wilfully transports or confines or causes to be transported or confined any domestic animal or animals in a manner, posture or confinement that will jeopardize the safety of the animal or the public 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. [1982 c 114 § 5; 1974 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 animals for feeding—Examination—Notice—Euthanasia. (1) If a law enforcement officer or animal control officer has probable cause to believe that an owner of a domestic animal has violated this chapter and no responsible person can be found to assume the animal's care, the officer may authorize, with a warrant, the removal of the animal to a suitable place for feeding and care, or may place the animal under the custody of an animal care and control agency. In determining what is a suitable place, the officer shall consider the animal's needs, including its size and behavioral characteristics. An officer may remove an animal under this subsection without a warrant only if the animal is in an immediate life-threatening condition.

(2) If a law enforcement officer or an animal control officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of a domestic animal allegedly neglected or abused in violation of this chapter by a veterinarian to determine whether the level of neglect or abuse in violation of this chapter is sufficient to require removal of the animal. This section does not condone illegal entry onto private property.

(3) Any owner whose domestic animal is removed pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. The notice shall be given by posting at the place of seizure, by delivery to a person residing at the place of seizure, or by registered mail if the owner is

known. In making the decision to remove an animal pursuant to this chapter, the officer shall make a good faith effort to contact the animal's owner before removal.

(4) The agency having custody of the animal may euthanize the animal or may find a responsible person to adopt the animal not less than fifteen business days after the animal is taken into custody. A custodial agency may euthanize severely injured, diseased, or suffering animals at any time. An owner may prevent the animal's destruction or adoption by: (a) Petitioning the district court of the county where the animal was seized for the animal's immediate return subject to court-imposed conditions, or (b) posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of thirty days from the seizure date. If the custodial agency still has custody of the animal when the bond or security expires, the animal shall become the agency's property unless the court orders an alternative disposition. If a court order prevents the agency from assuming ownership and the agency continues to care for the animal, the court shall order the owner to renew a bond or security for the agency's continuing costs for the animal's care.

(5) If no criminal case is filed within fourteen business days of the animal's removal, the owner may petition the district court of the county where the animal was removed for the animal's return. The petition shall be filed with the court, with copies served to the law enforcement or animal care and control agency responsible for removing the animal and to the prosecuting attorney. If the court grants the petition, the agency which seized the animal must deliver the animal to the owner at no cost to the owner. If a criminal action is filed after the petition is filed but before the animal is returned, the petition shall be joined with the criminal matter.

(6) In a motion or petition for the animal's return before a trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect or abuse and is not in need of being restored to health.

(7) Any authorized person treating or attempting to restore an animal to health under this chapter shall not be civilly or criminally liable for such action. [1994 c 261 § 6; 1987 c 335 § 1; 1974 ex.s. c 12 § 2.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Construction—1987 c 335: "Nothing in this act shall be construed as expanding or diminishing, in any manner whatsoever, any authority granted officers under RCW 16.52.020 or 16.52.030." [1987 c 335 § 6.]

Severability—1987 c 335: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 335 § 7.]

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, or dog, 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. This section does not apply if cutting off more than one-half of the ear of the animal is a customary husbandry practice. [1994 c 261 § 7; Code 1881 § 840; 1871 p 103 § 1; RRS § 3206. Formerly RCW 16.52.090, part.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.100 Confinement without food and water—Intervention by others. If any domestic animal is impounded or confined without necessary food and water for more than thirty-six consecutive hours, any person may, from time to time, as is necessary, enter into and open any pound or place of confinement in which any domestic animal is confined, and supply it with necessary food and water so long as it is confined. The person shall not be liable to action for the entry, and may collect from the animal's owner the reasonable cost of the food and water. The animal shall be subject to attachment for the costs and shall not be exempt from levy and sale upon execution issued upon a judgment. If an investigating officer finds it extremely difficult to supply confined animals with food and water, the officer may remove the animals to protective custody for that purpose. [1994 c 261 § 10; 1982 c 114 § 6; 1901 c 146 § 12; RRS § 3195.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

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.]

16.52.117 Animal fighting—Owners, trainers, spectators—Exceptions. (1) Any person who does any of the following is guilty of a gross misdemeanor punishable by imprisonment not to exceed one year, or by a fine not to exceed five thousand dollars, or by both fine and imprisonment:

(a) Owns, possesses, keeps, or trains any animal with the intent that the animal shall be engaged in an exhibition of fighting with another animal;

(b) For amusement or gain causes any animal to fight with another animal, or causes any animals to injure each other; or

(c) Permits any act in violation of (a) or (b) of this subsection to be done on any premises under his or her charge or control, or promotes or aids or abets any such act.

(2) Any person who is knowingly present, as a spectator, at any place or building where preparations are being made for an exhibition of the fighting of animals, with the intent to be present at such preparations, or is knowingly present at such exhibition or at any other fighting or injuring as described in subsection (1)(b) of this section, with the intent to be present at such exhibition, fighting, or injuring, is guilty of a misdemeanor.

(3) Nothing in this section may prohibit the following:

(a) The use of dogs in the management of livestock, as defined by chapter 16.57 RCW, by the owner of the livestock or the owner's employees or agents or other persons in lawful custody of the livestock;

(b) The use of dogs in hunting as permitted by law; or

(c) The training of animals or the use of equipment in the training of animals for any purpose not prohibited by law. [1994 c 261 § 11; 1982 c 114 § 9.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.165 Punishment—Conviction of misdemeanor. Every person convicted of any misdemeanor under RCW 16.52.080 or 16.52.090 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. [1982 c 114 § 7; 1901 c 146 § 16; RRS § 3199. Formerly RCW 16.52.160, part.]

16.52.180 Limitations on application of chapter. No part of this chapter shall be deemed to interfere with any of the laws of this state known as the "game laws," nor 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 or a research facility registered with the United States department of agriculture and regulated by 7 U.S.C. Sec. 2131 et seq. [1994 c 261 § 12; 1901 c 146 § 18; RRS § 3201.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.185 Exclusions from chapter. Nothing in this chapter applies to accepted husbandry practices used in the commercial raising or slaughtering of livestock or poultry, or products thereof or to the use of animals in the normal and usual course of rodeo events or to the customary use or exhibiting of animals in normal and usual events at fairs as defined in RCW 15.76.120. [1994 c 261 § 22; 1982 c 114 § 10.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.190 Poisoning animals. (1) Except as provided in subsections (2) and (3) of this section, a person is guilty of the crime of poisoning animals if the person intentionally or knowingly poisons an animal under circumstances which do not constitute animal cruelty in the first degree.

(2) Subsection (1) of this section shall not apply to euthanizing by poison an animal in a lawful and humane manner by the animal's owner, or by a duly authorized servant or agent of the owner, or by a person acting pursuant to instructions from a duly constituted public authority.

(3) Subsection (1) of this section shall not apply to the reasonable use of rodent or pest poison, insecticides, fungicides, or slug bait for their intended purposes. As used in this section, the term "rodent" includes but is not limited to Columbia ground squirrels, other ground squirrels, rats, mice, gophers, rabbits, and any other rodent designated as injurious to the agricultural interests of the state as provided in *chapter 17.16 RCW. The term "pest" as used in this section includes any pest as defined in RCW 17.21.020. [1994 c 261 § 13; 1941 c 105 § 1; RRS § 3207-1. Formerly RCW 16.52.150, part.]

*Reviser's note: Chapter 17.16 RCW was repealed by 1994 c 11 § 1.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

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, record the transaction as provided in RCW 69.38.030. 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. [1987 c 34 § 7; 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.]

16.52.200 Sentences—Forfeiture of animals—Liability for costs—Civil penalty—Education, counseling.

(1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur. If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of two years. The court may delay its decision on forfeiture under this subsection until the end of the probationary period.

(4) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.

(5) If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

(6) As a condition of the sentence imposed under this chapter or RCW 9.08.070, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment. [1994 c 261 § 14; 1987 c 335 § 2.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Construction—Severability—1987 c 335: See notes following RCW 16.52.085.

16.52.205 Animal cruelty in the first degree. (1) A person is guilty of animal cruelty in the first degree when, except as authorized in law, he or she intentionally (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills an animal by a means causing undue suffering, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

(2) Animal cruelty in the first degree is a class C felony. [1994 c 261 § 8.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.207 Animal cruelty in the second degree. (1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary food, water, shelter, rest, sanitation, ventilation, space, or medical

attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure; or

(b) Abandons the animal.

(3) Animal cruelty in the second degree is a misdemeanor.

(4) In any prosecution of animal cruelty in the second degree, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control. [1994 c 261 § 9.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.210 Destruction of animal by law enforcement officer—Immunity from liability. This chapter shall not limit the right of a law enforcement officer to destroy an animal that has been seriously injured and would otherwise continue to suffer. Such action shall be undertaken with reasonable prudence and, whenever possible, in consultation with a licensed veterinarian and the owner of the animal.

Law enforcement officers and licensed veterinarians shall be immune from civil and criminal liability for actions taken under this chapter if reasonable prudence is exercised in carrying out the provisions of this chapter. [1987 c 335 § 3.]

Construction—Severability—1987 c 335: See notes following RCW 16.52.085.

16.52.220 Transfers of mammals for research—Certification requirements—Pet animals. (1) All transfers of mammals, other than rats and mice bred for use in research and livestock, to research institutions in this state, whether by sale or otherwise, shall conform with federal laws and, except as to those animals obtained from a source outside the United States, shall be accompanied by one of the following written certifications, dated and signed under penalty of perjury:

(a) Breeder certification: A written statement certifying that the person signing the certification is a United States department of agriculture-licensed class A dealer whose business license in the state of Washington includes only those animals that the dealer breeds and raises as a closed or stable colony and those animals that the dealer acquires for the sole purpose of maintaining or enhancing the dealer's breeding colony, that the animal being sold is one of those animals, and that the person signing the certification is authorized to do so. The certification shall also include an identifying number for the dealer, such as a business license number.

(b) True owner certification: A written statement certifying that the animal being transferred is owned by the person signing the certification, and that the person signing the certification either (i) has no personal knowledge or reason to believe that the animal is a pet animal, or (ii) consents to having the animal used for research at a research institution. The certification shall also state the date that the owner obtained the animal, and the person or other source from whom it was obtained. The certification shall also include an identifying number for the person signing the certification, such as a driver's license number or business license number. The certifications signed by or on behalf of a humane society, animal control agency, or animal shelter

need not contain a statement that the society, agency, or shelter owns the animal, but shall state that the animal has been in the possession of the society, agency, or shelter for the minimum period required by law that entitles it to legally dispose of the animal.

(2) In addition to the foregoing certification, all research institutions in this state shall open at the time a dog or cat is transferred to it a file that contains the following information for each dog or cat transferred to the institution:

(a) All information required by federal law;

(b) The certification required by this section; and

(c) A brief description of the dog or cat (e.g. breed, color, sex, any identifying characteristics), and a photograph of the dog or cat.

The brief description may be contained in the written certification.

These files shall be maintained and open for public inspection for a period of at least two years from the date of acquisition of the animal.

(3) All research institutions in this state shall, within one hundred eighty days of May 12, 1989, adopt and operate under written policies governing the acquisition of animals to be used in biomedical or product research at that institution. The written policies shall be binding on all employees, agents, or contractors of the institution. These policies must contain, at a minimum, the following provisions:

(a) Animals shall be acquired in accordance with the federal animal welfare act, public health service policy, and other applicable statutes and regulations;

(b) No research may be conducted on a pet animal without the written permission of the pet animal's owner;

(c) Any animal acquired by the institution that is determined to be a pet animal shall be returned to its legal owner, unless the institution has the owner's written permission to retain the animal; and

(d) A person at the institution shall be designated to have the responsibility for investigating any facts supporting the possibility that an animal in the institution's possession may be a pet animal, including any inquiries from citizens regarding their pets. This person shall devise and insure implementation of procedures to inform inquiring citizens of their right to prompt review of the relevant files required to be kept by the institution for animals obtained under subsection (2) of this section, and shall be responsible for facilitating the rapid return of any animal determined to be a pet animal to the legal owner who has not given the institution permission to have the animal or transferred ownership of it to the institution.

(4) For the purposes of this section, "research institution" means any facility licensed by the United States department of agriculture to use animals in biomedical or product research. [1989 c 359 § 3.]

Application of consumer protection act: RCW 19.86.145.

16.52.230 Remedies not impaired. No provision of RCW 9.08.070 or 16.52.220 shall in any way interfere with or impair the operation of any other provision of this chapter or Title 28B RCW, relating to higher education or biomedical research. The provisions of RCW 9.08.070 and 16.52.220 are cumulative and nonexclusive and shall not affect any other remedy. [1989 c 359 § 5.]

16.52.300 Dogs or cats used as bait—Seizure—Limitation. (1) If any person commits the crime of animal cruelty in the first or second degree by using or trapping to use domestic dogs or cats as bait, prey, or targets for the purpose of training dogs or other animals to track, fight, or hunt, law enforcement officers or animal control officers shall seize and hold the animals being trained. The seized animals shall be disposed of by the court pursuant to the provisions of RCW 16.52.200(3).

(2) This section shall not in any way interfere with or impair the operation of any provision of Title 28B RCW, relating to higher education or biomedical research. [1994 c 261 § 15; 1990 c 226 § 1.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Chapter 16.54 ABANDONED ANIMALS

Sections

- 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 fifteen 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. [1977 ex.s. c 67 § 1; 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

- 16.57.010 Definitions.
16.57.015 Livestock identification advisory board—Rule review—Fee setting.
16.57.020 Livestock brands—Director is the recorder—Registration fee.
16.57.023 Permanent renewal of brands—Heritage brands—Fees.
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16.57.405 Microchip in a horse—Removal with intent to defraud—Gross misdemeanor.
16.57.407 Microchip in a horse—Authority to investigate removal.

- 16.57.410 Horses—Registering agencies—Records—Identification symbol inspections—Rules.
 16.57.420 Ratite identification.
 16.57.900 Severability—1959 c 54.
 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 a 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.

(5) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, 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.

(8) "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

(9) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse.

(10) "Poultry" means chickens, turkeys, ratites, and other domesticated fowl.

(11) "Ratite" means, but is not limited to, ostrich, emu, rhea, or other flightless bird used for human consumption, whether live or slaughtered.

(12) "Ratite farming" means breeding, raising, and rearing of an ostrich, emu, or rhea in captivity or an enclosure.

(13) "Microchipping" means the implantation of an identification microchip or similar electronic identification device to establish the identity of an individual animal:

(a) In the pipping muscle of a chick ratite or the implantation of a microchip in the tail muscle of an otherwise unidentified adult ratite;

(b) In the nuchal ligament of a horse unless otherwise specified by rule of the director; and

(c) In locations of other livestock species as specified by rule of the director when requested by an association of producers of that species of livestock. [1996 c 105 § 1; 1993 c 105 § 2; 1989 c 286 § 22; 1981 c 296 § 15; 1979 c 154 § 17; 1967 c 240 § 34; 1959 c 54 § 1.]

Legislative finding and purpose—1993 c 105: "The legislature finds that ratites have been raised for commercial purposes on farms in the United

States for over sixty years and have been raised elsewhere for over one hundred twenty years.

In recognition that ratite farming is an agricultural pursuit, the purpose of this act is to assure that the regulatory mechanisms regarding animal health and ownership identification are in place." [1993 c 105 § 1.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.08.010.

Severability—1979 c 154: See note following RCW 15.49.330.

16.57.015 Livestock identification advisory board—Rule review—Fee setting. (1) The director shall establish a livestock identification advisory board. The board shall be composed of six members appointed by the director. One member shall represent each of the following groups: Beef producers, public livestock market operators, horse owners, dairy farmers, cattle feeders, and meat processors. In making appointments, the director shall solicit nominations from organizations representing these groups state-wide.

(2) The purpose of the board is to provide advice to the director regarding livestock identification programs administered under this chapter and regarding brand inspection fees and related licensing fees. The director shall consult the board before adopting, amending, or repealing a rule under this chapter or altering a fee under RCW 16.58.050, 16.58.130, 16.65.030, or 16.65.090. If the director publishes in the state register a proposed rule to be adopted under the authority of this chapter or a proposed rule setting a fee under RCW 16.58.050, 16.58.130, 16.65.030, or 16.65.090 and the rule has not received the approval of the advisory board, the director shall file with the board a written statement setting forth the director's reasons for proposing the rule without the board's approval.

(3) The members of the advisory board serve three-year terms. However, the director shall by rule provide shorter initial terms for some of the members of the board to stagger the expiration of the initial terms. The members serve without compensation. The director may authorize the expenses of a member to be reimbursed if the member is selected to attend a regional or national conference or meeting regarding livestock identification. Any such reimbursement shall be in accordance with RCW 43.03.050 and 43.03.060. [1993 c 354 § 10.]

16.57.020 Livestock brands—Director is the recorder—Registration 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 thirty-five dollar recording fee. The director shall, upon his or her satisfaction that the application and brand facsimile meet the requirements of this chapter and/or rules adopted hereunder, record such brand. [1994 c 46 § 7; 1971 ex.s. c 135 § 1; 1965 c 66 § 1; 1959 c 54 § 2.]

Effective date—1994 c 46: See note following RCW 15.58.070.

16.57.023 Permanent renewal of brands—Heritage brands—Fees. (1) The *board may adopt rules establishing criteria and fees for the permanent renewal of brands registered with the department or with the *board but

renewed as livestock heritage brands. Such heritage brands are not intended for use on livestock.

(2) If the Washington state *livestock identification board with authority and responsibility for administering the livestock identification program is not established by July 31, 1998, the department of agriculture is granted the authorities provided to the *board by subsection (1) of this section. [1998 c 263 § 5.]

***Reviser's note:** The section creating the livestock identification board, 1998 c 263 § 2, was vetoed by the governor.

16.57.025 Livestock inspection—Licensed and accredited veterinarians—Fees. (1) The *board may enter into agreements with Washington state licensed and accredited veterinarians, who have been certified by the *board, to perform livestock inspection. Fees for livestock inspection performed by a certified veterinarian shall be collected by the veterinarian and remitted to the *board. Veterinarians providing livestock inspection may charge a fee for livestock inspection that is in addition to and separate from fees collected under RCW 16.57.220. The *board may adopt rules necessary to implement livestock inspection performed by veterinarians and may adopt fees to cover the cost associated with certification of veterinarians.

(2) If the Washington state *livestock identification board with authority and responsibility for administering the livestock identification program is not established by July 31, 1998, the department of agriculture is granted all of the authorities provided to the *board by subsection (1) of this section. [1998 c 263 § 6.]

***Reviser's note:** The section creating the livestock identification board, 1998 c 263 § 2, was vetoed by the governor.

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 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 Brand renewal—Schedule—Fee. The director shall establish by rule a schedule for the renewal of registered brands. The fee for renewal of the brands shall be no less than twenty-five dollars for each two-year period of brand ownership, except that the director may, in adopting a renewal schedule, provide for the collection of renewal fees on a prorated basis and may by rule increase the registration and renewal fee for brands by no more than fifty percent subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. At least sixty days before the expiration of a registered brand, the director shall notify by letter the owner of record of the brand that on the payment of the requisite application fee and application of renewal the director shall issue the proof of payment allowing the brand owner exclusive ownership and use of the brand for the subsequent registration period. The failure of the registered owner to pay the renewal fee by the date required by rule 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 the registration fee and a late filing fee to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015, for renewal subsequent to the regular renewal period. The director may at the director's discretion, if such brand is not reissued within one year to the prior registered owner, issue such brand to any other applicant. [1994 c 46 § 16; 1993 c 354 § 5; 1991 c 110 § 1; 1974 ex.s. c 64 § 2; 1971 ex.s. c 135 § 2; 1965 c 66 § 3; 1961 c 148 § 1; 1959 c 54 § 8.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

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 recording fee not to exceed fifteen dollars to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. 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 the director's agents to properly record such instrument. [1994 c 46 § 17; 1993 c 354 § 6; 1974 ex.s. c 64 § 3; 1965 c 66 § 2; 1959 c 54 § 9.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

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 punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 110 § 2; 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 the owner's brand upon payment of a fee not to exceed seven dollars and fifty cents to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. [1994 c 46 § 18; 1993 c 354 § 7; 1974 ex.s. c 64 § 4; 1959 c 54 § 14.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

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 ex.s. c 64 § 5; 1959 c 54 § 15.]

16.57.160 Cattle—Mandatory brand inspection points. The director may by rule adopted subsequent to a public hearing designate any 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, branded, or accompanied by the form prescribed by the director under RCW 16.57.240 or a brand certificate issued by the department. [1991 c 110 § 3; 1981 c 296 § 16; 1971 ex.s. c 135 § 4; 1959 c 54 § 16.]

Effective date—1981 c 296 § 16: "Section 16 of this amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 19, 1981]." [1981 c 296 § 34.]

Severability—1981 c 296: See note following RCW 15.08.010.

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 Cattle and horses—Brand inspection charge—Lien—Fee schedule. The director shall cause a charge to be made for all brand inspection of cattle and horses required under this chapter and rules 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. Except as provided by rule, such inspection charges shall be due and payable at the time brand inspection is performed and shall be paid upon billing by the department and if not shall constitute a prior lien on the cattle or cattle hides or 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 inspection may establish schedules by days and hours when a brand inspector will be on duty to 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 sixty cents per head for cattle and not more than two dollars and forty cents per head for horses as prescribed by the director subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. Fees for brand inspection of cattle and horses at points other than those designated by the director or not in accord with the schedules established by the director shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. For the purpose of this section, actual costs shall mean fifteen dollars per hour and the current mileage rate set by the office of financial management. [1997 c 356 § 3; 1997 c 356 § 2; 1995 c 374 § 49; (1995 c 374 § 48 expired July 1, 1997). Prior: 1994 c 46 § 25; 1994 c 46 § 19; 1993 c 354 § 8; 1981 c 296 § 17; 1971 ex.s. c 135 § 5; 1967 c 240 § 35; 1959 c 54 § 22.]

Effective dates—1997 c 356: "(1) Sections 2, 4, 6, 8, and 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997.

(2) Sections 3, 5, 7, 9, and 11 of this act take effect July 1, 1998." [1997 c 356 § 12.]

Effective date—Expiration date—1995 c 374 §§ 48, 49, 56, and 57: "(1) Sections 49 and 57 of this act shall take effect July 1, 1997.

(2) Sections 48 and 56 of this act shall expire July 1, 1997." [1995 c 374 § 58.]

Effective date—1994 c 46 §§ 21-25: See note following RCW 16.65.090.

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

Severability—1981 c 296: See note following RCW 15.08.010.

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. [1995 c 374 § 50; 1959 c 54 § 23.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

16.57.240 Record of cattle—Requirements—Exception. Any person purchasing, selling, holding for sale, trading, bartering, transferring title, slaughtering, handling, or transporting cattle 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 cattle and any other necessary information required by the director. The original shall be kept for a period of three years or shall be furnished to the director upon demand or as prescribed by rule, one copy shall accompany the cattle to their destination 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, cattle may be moved or transported within this state without being accompanied by an official certificate of permit, brand inspection certificate, bill of sale, or self-inspection slip:

(1) When such cattle are moved or transported upon lands under the exclusive control of the person moving or transporting such cattle;

(2) When such cattle are being moved or transported for temporary grazing or feeding purposes and have the registered brand of the person having or transporting such cattle. [1995 c 374 § 51; 1991 c 110 § 4; 1985 c 415 § 8; 1981 c 296 § 18; 1959 c 54 § 24.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.260 Removal of cattle or horses 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 cattle or horses which are not accompanied at all times by an official brand inspection certificate issued by the director on such cattle or horses, except as provided in RCW 16.57.160. [1981 c 296 § 19; 1959 c 54 § 26.]

Severability—1981 c 296: See note following RCW 15.08.010.

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—Penalty. No person shall knowingly have unlawful possession of any livestock marked with a recorded brand or tattoo of another person unless:

(1) Such livestock lawfully bears the person's 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 cattle is accompanied by a self-inspection slip; or

(5) Such livestock is accompanied by a bill of sale from the previous owner or other satisfactory proof of ownership.

A violation of this section constitutes a gross misdemeanor punishable to the same extent as a gross misdemeanor or that is punishable under RCW 9A.20.021. [1995 c 374 § 52; 1991 c 110 § 5; 1959 c 54 § 28.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

16.57.290 Unbranded and undocumented cattle and horses—Disposition. All unbranded cattle and horses 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 by the director, shall be sold by the director or the director's representative, unless other satisfactory proof of ownership is presented showing the person presenting them to be lawfully in possession. Upon the sale of such cattle or horses, the director or the director's representative shall give the purchasers a bill of sale therefor, or, if theft is suspected, the cattle or horses may be impounded by the director or the director's representative. [1995 c 374 § 53; 1989 c 286 § 23; 1981 c 296 § 20; 1979 c 154 § 18; 1967 ex.s. c 120 § 6; 1959 c 54 § 29.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.08.010.

Severability—1979 c 154: See note following RCW 15.49.330.

16.57.300 Unbranded and undocumented cattle and horses—Disposition of sale proceeds. The proceeds from the sale of cattle and horses as provided for under RCW 16.57.290, 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 such cattle or horses 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 cattle or horses. If such consignor fails to establish legal ownership or the right to sell such cattle or horses, such

proceeds shall be paid to the director to be disposed of as any other stray proceeds. [1989 c 286 § 24; 1981 c 296 § 21; 1959 c 54 § 30.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.08.010.

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 or she has sold, bartered or traded such animals to the claimant or any other person. A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 110 § 6; 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 stray, 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 may adopt such rules 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 adopted hereunder. No person shall interfere with the director when he or she is performing or carrying out duties imposed on him or her by this chapter and/or rules adopted hereunder. [1994 c 46 § 8; 1959 c 54 § 35.]

Effective date—1994 c 46: See note following RCW 15.58.070.

16.57.360 Civil infractions. The department is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

The violation of any provision of this chapter and/or rules and regulations adopted hereunder shall constitute a class I civil infraction as provided under chapter 7.80 RCW unless otherwise specified herein. [1991 c 110 § 7; 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.]

Fees provided in chapter 16.58 RCW to be used to carry out provisions of chapters 16.57 and 16.58 RCW: RCW 16.58.130.

16.57.380 Horses—Mandatory brand inspection points—Powers of director. The director may by rule adopted subsequent to a public hearing designate any 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. [1991 c 110 § 8; 1981 c 296 § 22; 1974 ex.s. c 38 § 1.]

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.400 Horse and cattle identification—Exemption from brand inspection—Fees. The director may provide by rules and regulations adopted pursuant to chapter 34.05 RCW for the issuance of individual horse and cattle identification certificates or other means of horse and cattle identification deemed appropriate. Such certificates or other means of identification shall be valid only for the use of the horse and cattle owner in whose name it is issued.

Horses and cattle 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 a 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 34.05 RCW. [1994 c 46 § 20; 1993 c 354 § 9; 1981 c 296 § 23; 1974 ex.s. c 38 § 3.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.405 Microchip in a horse—Removal with intent to defraud—Gross misdemeanor. A person who removes or causes to be removed a microchip implanted in a horse, or who removes or causes to be removed a microchip from one horse and implants or causes it to be implanted in another horse, with the intent to defraud a subsequent purchaser, is guilty of a gross misdemeanor. [1996 c 105 § 2.]

16.57.407 Microchip in a horse—Authority to investigate removal. The department has the authority to conduct an investigation of an incident where scars or other marks indicate that a microchip has been removed from a horse. [1996 c 105 § 3.]

16.57.410 Horses—Registering agencies—Records—Identification symbol inspections—Rules. (1) No person may act as a registering agency without a permit issued by the department. The director may issue a permit to any person or organization to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the director. Application for such permit, or the renewal thereof by January 1 of each year, shall be on a form prescribed by the director, and accompanied by the proof of registration to be issued, any other documents required by the director, and a fee of one hundred dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the director, if requested by the director.

(3) Individual identification symbols shall be inspected as required for brands under RCW 16.57.220 and 16.57.380. Any horse presented for inspection and bearing such a symbol, but not accompanied by proof of registration and certificate of permit, shall be sold as provided under RCW 16.57.290 through 16.57.330.

(4) The director shall adopt such rules as are necessary for the effective administration of this section pursuant to chapter 34.05 RCW. [1993 c 354 § 11; 1989 c 286 § 25; 1981 c 296 § 35.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.420 Ratite identification. The department may, in consultation with representatives of the ratite industry, develop by rule a system that provides for the identification of individual ratites through the use of microchipping. The department may establish fees for the issuance or reissuance of microchipping numbers sufficient to cover the expenses of the department. [1993 c 105 § 3.]

Legislative finding and purpose—1993 c 105: See note following RCW 16.57.010.

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

Sections

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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. [1979 c 81 § 1; 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—Fee—Issuance 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 six hundred dollars. Upon approval of the application by the director and compliance with the provisions of this chapter and rules adopted hereunder, the applicant shall be issued a license or a renewal thereof. [1997 c 356 § 5; 1997 c 356 § 4; 1994 c 46 § 23; 1994 c 46 § 14; 1993 c 354 § 3; 1979 c 81 § 2; 1971 ex.s. c 181 § 5.]

Effective dates—1997 c 356: See note following RCW 16.57.220.

Effective date—1994 c 46 §§ 21-25: See note following RCW 16.65.090.

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

16.58.060 Certified feed lot license—Expiration—Late renewal. The director shall establish by rule an expiration date or dates for all certified feed lot licenses. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. If an application for renewal of a certified feed lot license is not received by the department per the date required by rule or should a person fail, refuse, or neglect to apply for renewal of a preexisting license on or before the date of expiration, that person 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. [1991 c 109 § 10; 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 34.05 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 34.05

RCW concerning adjudicative proceedings. [1989 c 175 § 54; 1971 ex.s. c 181 § 7.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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.]

16.58.095 Brand inspection required for cattle not having brand inspection certificate. All cattle entering or reentering a certified feed lot must be inspected for brands upon entry, unless they are accompanied by a brand inspection certificate issued by the director, or any other agency authorized in any state or Canadian province by law to issue such a certificate. Licensees shall report a discrepancy between cattle entering or reentering a certified feed lot and the brand inspection certificate accompanying the cattle to the nearest brand inspector immediately. A discrepancy may require an inspection of all the cattle entering or reentering the lot, except as may otherwise be provided by rule. [1991 c 109 § 11; 1979 c 81 § 6.]

16.58.100 Audits—Purpose. The director shall each year conduct audits of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. Such audits 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. [1979 c 81 § 3; 1971 ex.s. c 181 § 10.]

16.58.110 Records—Examination. 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 examination by the director for the purpose of maintaining the integrity of the identity of all such cattle. The director may make the examinations only during regular business hours except in an emergency to protect the interest of the owners of such cattle. [1991 c 109 § 12; 1971 ex.s. c 181 § 11.]

16.58.120 Records required at each certified feed lot. The licensee shall maintain sufficient records as required by the director at each certified feed lot, if said licensee operates more than one certified feed lot. [1991 c 109 § 13; 1971 ex.s. c 181 § 12.]

16.58.130 Feed lots—Fee for each head of cattle handled—Failure to pay. Each licensee shall pay to the director a fee of twelve cents for each head of cattle handled through the licensee's feed lot. Payment of such fee shall be made by the licensee on a monthly basis. 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 a licensee has failed to make prompt and timely payments. [1997 c 356 § 7; 1997 c 356 § 6; 1994 c 46 § 24; 1994 c 46 § 15; 1993 c 354 § 4; 1991 c 109 § 14; 1979 c 81 § 4; 1971 ex.s. c 181 § 13.]

Effective dates—1997 c 356: See note following RCW 16.57.220.

Effective date—1994 c 46 §§ 21-25: See note following RCW 16.65.090.

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

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 or chapter 16.57 RCW. [1979 c 81 § 5; 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 investigation. The director may, when a certified feed lot's conditions become such that the integrity of reports or records of the cattle therein becomes doubtful, suspend such certified feed lot's license until such time as the director can conduct an investigation to carry out the purpose of this chapter. [1991 c 109 § 15; 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

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16.60.010 Lawful fence defined. A lawful fence shall be of at least four barbed, horizontal, well-stretched wires, spaced so that the top wire is forty-eight inches, plus or minus four inches, above the ground and the other wires at intervals below the top wire of twelve, twenty-two, and thirty-two inches. These wires shall be securely fastened to substantial posts set firmly in the ground as nearly equidistant as possible, but not more than twenty-four feet apart. If the posts are set more than sixteen feet apart, the wires shall be supported by stays placed no more than eight feet from each other or from the posts. [1985 c 415 § 22; 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 as the fence described in RCW 16.60.010 shall be lawful fences. [1985 c 415 § 23; 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—Notice. 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 provide notice as required under RCW 16.04.020 and 16.04.025: PROVIDED FURTHER, 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. [1985 c 415 § 26; Code 1881 § 2490; 1873 p 447 § 3; 1871 p 64 § 3; 1869 p 324 § 3; RRS § 5443.]

Trespassing animals—Restraint—Damages and costs: 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. The term does not include the operation of a person licensed under this chapter to operate a special open consignment horse sale.

(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.

(10) "Special open consignment horse sale" means a sale conducted by a person other than the operator of a public livestock market which is limited to the consignment of horses and donkeys only for sale on an occasional and seasonal basis. [1983 c 298 § 1; 1961 c 182 § 1; 1959 c 107 § 1.]

16.65.015 Exemptions from chapter. This chapter does not apply to:

(1) A farmer selling his own livestock on the farmer's own premises by auction or any other method.

(2) 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 the association's management and responsibility, and the special sale has been approved by the director in writing. However, the special sale shall be subject to brand and health inspection requirements as provided in this chapter for sales at public livestock markets. [1983 c 298 § 2.]

16.65.020 Supervision of markets and special open consignment horse sales—Rules and regulations—Interference with director's duties. Public livestock

markets and special open consignment horse sales 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. [1983 c 298 § 5; 1959 c 107 § 2.]

16.65.030 Public livestock market license—Application—Fee.

(1) On and after June 10, 1959, no person shall operate a public livestock market without first having obtained a license from the director. Application for such license shall be in writing on forms prescribed by the director, and shall include the following:

(a) A nonrefundable original license application fee of fifteen hundred dollars.

(b) A legal description of the property upon which the public livestock market shall be located.

(c) 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.

(d) A detailed statement showing all the assets and liabilities of the applicant which must reflect a sufficient net worth to construct or operate a public livestock market.

(e) 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.

(f) The weekly or monthly sales day or days on which the applicant proposes to operate his or her public livestock market sales.

(g) Projected source and quantity of livestock, by county, anticipated to be handled.

(h) Projected income and expense statements for the first year's operation.

(i) Facts upon which are based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(j) Such other information as the director may reasonably require.

(2) The director shall, after public hearing as provided by chapter 34.05 RCW, grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to all of the requirements of this section and giving reasonable consideration at the same hearing to:

(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application; and

(b) The present market services elsewhere available to the trade area proposed to be served.

(3) Applications for renewal under RCW 16.65.040 shall include all information under subsection (1) of this section, except subsection (1)(a) of this section. [1995 c 374 § 54; (1994 c 46 § 21 repealed by 1995 c 374 § 55); 1994 c 46 § 12; 1993 c 354 § 1; 1991 c 17 § 1; 1979 ex.s. c 91 § 1;

1971 ex.s. c 192 § 1; 1967 ex.s. c 120 § 5; 1961 c 182 § 2; 1959 c 107 § 3.]

Prior legislative approval—1994 c 46: "The reenactment of sections 12 through 20 of this act constitutes approval of fee increases for which prior legislative approval is required by RCW 43.135.055 (section 8, chapter 2, Laws of 1994, Initiative Measure No. 601)." [1994 c 46 § 26.]

Effective date—1994 c 46: See note following RCW 15.58.070.

16.65.037 Approval of application—License—Fee—Rules. (1) 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.

(2) The license fee shall be based on the average gross sales volume per official sales day of that market:

(a) Markets with an average gross sales volume up to and including ten thousand dollars, a one hundred twenty dollar fee;

(b) Markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars, a two hundred forty dollar fee; and

(c) Markets with an average gross sales volume over fifty thousand dollars, a three hundred sixty dollar fee.

The fees for public market licenses shall be set by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015.

(3) 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 the appropriate application fee. [1997 c 356 § 9; 1997 c 356 § 8; 1995 c 374 § 57.]

Effective dates—1997 c 356: See note following RCW 16.57.220.

Effective date—Expiration date—1995 c 374 §§ 48, 49, 56, and 57: See note following RCW 16.57.220.

16.65.040 Public livestock market license—Expiration—Penalty.

All public livestock market 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 license fee, before such license may be renewed by the director. [1983 c 298 § 6; 1979 ex.s. c 91 § 2; 1959 c 107 § 4.]

16.65.042 Special open consignment horse sale license required—Application—Fee—Where and when valid.

(1) A person shall not operate a special open consignment horse sale without first obtaining a license from the director. The application for the license shall include:

(a) A detailed statement showing all of the assets and liabilities of the applicant;

(b) The schedule of rates and charges the applicant proposes to impose on the owners of horses for services rendered in the operation of the horse sale;

(c) The specific date and exact location of the proposed sale;

(d) Projected quantity and approximate value of horses to be handled; and

(e) Such other information as the director may reasonably require.

(2) The application shall be accompanied by a license fee of one hundred dollars. Upon the approval of the application by the director and compliance with this chapter, the applicant shall be issued a license. A special open consignment horse sale license is valid only for the specific date or dates and exact location for which the license was issued. [1983 c 298 § 3.]

16.65.044 Public livestock market—Open consignment horse sale—Consignor's name. It is lawful for the operator of a public livestock market or an open consignment horse sale, upon receiving a request to do so, to allow the announcement of the correct and accurate name of the consignor of any cattle or horses being presented for sale to potential buyers. [1991 c 17 § 5.]

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 or special open consignment horse sale. [1983 c 298 § 7; 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 attempted payment to a consignor by a check the licensee knows not to be backed by sufficient funds to cover such check; (c) has violated any of the provisions of this chapter or rules and regulations adopted hereunder; (d) has violated any laws of the state that require health or brand inspection of livestock; (e) 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. [1985 c 415 § 9; 1971 ex.s. c 192 § 2; 1961 c 182 § 3; 1959 c 107 § 8.]

Orders—Appeal: RCW 16.65.450.

16.65.090 Brand inspection—Consignor's fee—Inspection fee. 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 or special open consignment horse sale. However, if in any one sale day the total fees collected for brand inspection do not exceed seventy-two dollars, then such licensee shall pay seventy-two dollars for such brand inspection or as much thereof as the director may prescribe. [1997 c 356 § 11; 1997 c 356 § 10; 1994 c 46 § 22; 1994 c 46 § 13; 1993 c 354 § 2; 1983 c 298 § 8; 1971 ex.s. c 192 § 3; 1959 c 107 § 9.]

Effective dates—1997 c 356: See note following RCW 16.57.220.

Effective date—1994 c 46 §§ 21-25: "Sections 21 through 25 of this act shall take effect July 1, 1997." [1994 c 46 § 29.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

16.65.100 Brand inspection—Purchaser's fee. The licensee of each public livestock market or special open consignment horse sale 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. [1983 c 298 § 9; 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 or special open consignment horse sale without making a full disclosure to the agent or licensee of such public livestock market or special open consignment horse sale of any unsatisfied lien or mortgage upon such livestock shall constitute a gross misdemeanor. [1983 c 298 § 10; 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 or special open consignment horse sale shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. [1983 c 298 § 11; 1959 c 107 § 18.]

16.65.190 Schedule of rates and charges. No person shall hereafter operate a public livestock market or special open consignment horse sale unless such person has filed a schedule with the application for license to operate such public livestock market or special open consignment horse sale. Such schedule shall show all rates and charges for stockyard services to be furnished by such person at such public livestock market or special open consignment horse sale.

(1) Schedules shall be posted conspicuously at the public livestock market or special open consignment horse sale, 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 or special open consignment horse sale any stockyard services except such as are specified in such schedule. [1983 c 298 § 12; 1959 c 107 § 19.]

16.65.200 Licensee's bond to operate market or special open consignment horse sale. Before the license is issued to operate a public livestock market or special open consignment horse sale, 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 or special open consignment horse sale: 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. [1983 c 298 § 13; 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.]

16.65.232 Licensee's bond to operate special open consignment horse sale—Amount determined by estimate of business—Minimum amount. The sum of the bond to be executed by an applicant for a special open consignment horse sale license shall be determined by estimating the dollar volume of business to be carried on, at, or through the applicant's proposed special open consignment horse sale. The bond amount shall be that amount estimated as the applicant's dollar volume of business. However, the bond shall not be in an amount less than ten thousand dollars. If the amount exceeds fifty thousand dollars, then that portion above fifty thousand dollars shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest greater five thousand dollar figure. [1983 c 298 § 4.]

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 or special open consignment horse sale, 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. [1983 c 298 § 14; 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 Investigations by director—Complaints. For the purpose of enforcing the provisions of this chapter, the director on the director's own motion or upon the verified complaint of any vendor or consignor against any licensee, or agent, or any person assuming or attempting to act as such, shall have full authority to make any and all necessary investigations. The director is empowered to administer oaths of verification of such complaints. [1985 c 415 § 10; 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 in a public livestock market shall have watering and feeding facilities for livestock held in such pens. It shall be unlawful for a public livestock market to hold livestock for a period longer than twenty-four hours without feeding and watering such livestock. An operator of a public livestock market may also refuse to accept the consignment of any livestock that the licensee may believe to have been inadequately fed or otherwise inadequately cared for prior to the delivery of the livestock in question to the public livestock market. [1991 c 17 § 2; 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 at public livestock market.

(1) Each public livestock market 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. [1983 c 298 § 15; 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.

(3) In any case that a licensee fails to conduct sales on the sales days allocated to the licensee, the director shall, subsequent to a hearing, be authorized to revoke an allocation for nonuse. The rate of usage required to maintain an allocation shall be established by rule. [1991 c 17 § 3; 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 public livestock market license, sale of horses and/or mules—Sales days. The director shall have the authority to issue a public livestock market 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. [1983 c 298 § 16; 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 adjudicative proceeding, and shall comply in all respects with chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 55; 1961 c 182 § 7.]

Effective date—1989 c 175: See note following RCW 34.05.010.

16.65.450 Orders—Appeal. Any licensee or applicant who feels aggrieved by an order of the director 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. [1991 c 17 § 4; 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

Sections

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16.67.920	Effective date—1969 c 133.

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—Generally. There is hereby created a Washington state beef commission to be thus known and designated. The commission shall be composed of two beef producers, two dairy (beef) producers, two feeders, one livestock salesyard operator, and one meat packer. If an otherwise voting member is elected as the chair of the commission, the member may, during the member's term as chair of the commission, cast a vote as a member of the commission only to break a tie vote. 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 or she represents for a period of five years, and has during that period derived a substantial portion of his or her 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. [1997 c 363 § 1; 1993 c 40 § 1; 1991 c 9 § 1; 1969 c 133 § 3.]

Effective date—1993 c 40: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1993." [1993 c 40 § 5.]

16.67.051 Designation of positions—Terms. Commencing on July 1, 1993, the appointive positions on the commission shall be designated as follows: The beef producers shall be designated position one and position six; the dairy (beef) producers shall be designated position two and position seven; the feeders shall be designated position three and position eight; the livestock salesyard operator shall be designated position four; and the meat packer shall be designated position five.

The initial terms of positions one and four shall terminate July 1, 1994; positions two and five shall terminate July 1, 1995; and position three shall terminate July 1, 1996. The initial terms of position six shall terminate July 1, 1998; position seven shall terminate July 1, 1999; and position eight shall terminate July 1, 2000. The regular term of office of subsequent appointees shall be three years from the date of appointment and until their successors are appointed. [1997 c 363 § 2; 1993 c 40 § 3.]

Effective date—1993 c 40: See note following RCW 16.67.040.

16.67.060 Director to appoint members—Recommendations by industry. The director shall appoint the members of the commission. In making such appointments, the director shall take into consideration recommendations made to him or her 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.

Commencing on June 1, 1993, and by June 1 of each subsequent year, organizations under this section shall make a recommendation as required, to the director of a person to serve on the commission. [1993 c 40 § 4; 1991 c 9 § 3; 1969 c 133 § 5.]

Effective date—1993 c 40: See note following RCW 16.67.040.

16.67.070 Vacancies—Compensation and travel 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 director forthwith.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1991 c 9 § 4; 1984 c 287 § 19; 1975-'76 2nd ex.s. c 34 § 22; 1969 c 133 § 6.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

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 34.05 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 every five years 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 audit period 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. [1982 c 81 § 3; 1969 c 133 § 8.]

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, process-

ing, 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—Exemption—Levy and collection under federal order. (1) Except as provided in subsection (2) of this section, there is hereby levied an assessment of fifty 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 the assessment levied pursuant to this section is greater than one percent of the sales price, the animal is exempt from the assessment unless the federal order implementing the national beef promotion and research program establishes an assessment on these animals: PROVIDED FURTHER, 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 livestock services 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.

(2) While the federal order implementing the national beef promotion and research program is in effect, the assessment to be levied and the procedures for its collection shall be as required by the federal order and as described by rules adopted by the commission. [1987 c 393 § 11; 1986 c 190 § 2; 1982 c 47 § 1; 1975 1st ex.s. c 93 § 1; 1969 c 133 § 11.]

16.67.122 Additional assessment—National beef research and promotion program—Contingency. In addition to the assessment authorized pursuant to RCW 16.67.120, the commission shall have the authority to collect an additional assessment of fifty cents per head for cattle subject to assessment by federal order for the purpose of providing funds for a national beef promotion and research program. The manner in which this assessment will be levied and collected shall be established by rule. The authority to collect this assessment shall be contingent upon the implementation of federal legislation providing for a national beef promotion and research program and the establishment of the assessment requirement to fund its activities. [1986 c 190 § 1.]

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.]

16.67.130 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—Exception. The assessment provided for in RCW 16.67.120 shall not be applicable to any animal sold for milk production unless the federal order implementing the national beef promotion and research program establishes an assessment on the animals. [1986 c 190 § 3; 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.]

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

Sections	
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16.68.030	Sale, gift, or conveyance prohibited—Exceptions.
16.68.040	License required of rendering plants and independent collectors.
16.68.050	Rendering plant license fee.
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16.68.070	Substation or places of transfer license fee.
16.68.080	Expiration of license—Revocation.
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16.68.100	Procedure upon application—Inspection of premises.
16.68.110	Duty of licensees as to premises.
16.68.120	Duty of licensees—Standards.
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16.68.140	Unlawful possession of horse meat—Exceptions.

- 16.68.150 Feeding of carcasses to swine unlawful—Exception.
 16.68.160 Disposition of fees.
 16.68.170 Rules and regulations.
 16.68.180 Penalty for violations.
 16.68.190 Bait for trapping purposes—Exception.

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 by-product 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.]

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 ani-

mals, 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 16.36.105 and 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 Bait for trapping purposes—Exception. Nothing in this chapter shall prohibit the department of fish and wildlife from using the carcasses of dead animals for trap bait in their regular trapping operations. [1994 c 264 § 6; 1988 c 36 § 7; 1949 c 100 § 18A; Rem. Supp. 1949 § 3142-23.]

Chapter 16.70

CONTROL OF PET ANIMALS INFECTED WITH DISEASES COMMUNICABLE TO HUMANS

Sections

16.70.010	Purpose.
16.70.020	Definitions.
16.70.030	Emergency action authorized—Scope—Animals as public nuisance.
16.70.040	Rules—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 health 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. [1991 c 3 § 2; 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 health or his or her designee.

(3) "Department" means the department of health.

(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. [1991 c 3 § 3; 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 43.20A.640 through 43.20A.650.

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.]

Reviser's note: "RCW 43.20.150 through 43.20.170" were translated to "RCW 43.20A.640 through 43.20A.650" due to their recodification from chapter 43.20 RCW to chapter 43.20A RCW by 1979 c 141 § 384. Subsequently, RCW 43.20A.640 through 43.20A.650 were recodified as RCW 43.70.170 through 43.70.190, pursuant to 1989 1st ex.s. c 9 § 267, effective July 1, 1989.

16.70.040 Rules—Scope. (1) The secretary, with the advice and concurrence of the director of the department of agriculture, shall be authorized to develop rules for proposed adoption by the board relating to the importation, movement, sale, transfer, or possession of pet animals as defined in RCW 16.70.020 which are reasonably necessary for the protection and welfare of the people of this state.

(2) The director of the department of agriculture shall also be authorized to adopt rules to allow administration of permits for those pet animals under subsection (1) of this section by the state veterinarian. [1996 c 188 § 5; 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

16.72.010	Definitions.
16.72.020	Quarantine controls.
16.72.030	Fox, mink, marten declared personality.
16.72.040	Branding—Recording.

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 personality. 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.]

*Reviser's note: Chapter 16.56 RCW was repealed by 1959 c 54 § 39. For later enactment, see chapter 16.57 RCW.

Chapter 16.74 WASHINGTON WHOLESOME POULTRY PRODUCTS ACT

Sections

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Poultry and poultry products—Label requirements: RCW 69.04.333 through 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 contami-

nated 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 Preslaught 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 preslaught 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 under chapter

34.05 RCW, 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. [1989 c 175 § 56; 1969 ex.s. c 146 § 36.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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 rule and under such conditions as to sanitary standards, practices, and procedures as he or she may prescribe, exempt from specific provisions of this chapter—

(a) 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

(b) 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 rule and under such conditions, including sanitary standards, practices, and procedures, as he or she may prescribe, exempt from specific provisions of this chapter—

(i) the slaughtering by any person of poultry of his or her own raising, and the processing by him or her and transportation of the poultry products exclusively for use by him or her and members of his or her household and his or her 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 or her and members of his or her household and his or her nonpaying guests and employees: PROVIDED, That the director may adopt such rules 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 or she determines that the protection of consumers from adulterated or misbranded poultry products will not be impaired by such action, provide by rule, consistent with (c) of this subsection, for the exemption of the operations of poultry producers not exempted under (a) of this subsection, 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 or she deems appropriate, while still protecting the public from adulterated or misbranded products, under such conditions, including sanitary requirements, as he or she 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 director shall, by rule and under such conditions as to sanitary standards, practices, and procedures as he or she may prescribe, exempt from specific provisions of this chapter 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 or packaging, or both, of poultry products on the premises where such sales to consumers are made.

(4) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to articles and operations which are exempted under this section, except as otherwise specified under subsections (1) and (2) of this section.

(5) The director may by order suspend or terminate any exemption under this section with respect to any person whenever he or she finds that such action will aid in effectuating the purposes of this chapter. [1993 c 166 § 2; 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.]

***Reviser's note:** RCW 16.74.570 was amended by 1993 c 166 § 2, deleting the text of subsection (1)(a) relating to licensing provisions.

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 34.05 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 34.05 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 34.05 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 Civil and criminal penalty. If the director finds that a person has committed a violation of the provisions of this chapter or rules adopted under this chapter, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation is a separate and distinct offense.

Any person violating any provisions of this chapter or any rules adopted hereunder shall be guilty of a gross misdemeanor.

Both a civil penalty and a criminal penalty may not be imposed for the same violation. [1994 c 128 § 3; 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 nonexclusive 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.
- 17.10 Noxious weeds—Control boards.
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Chapter 17.04 WEED DISTRICTS

Sections

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Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

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 department of natural resources at Olympia. [1988 c 128 § 4; 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: 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.

17.04.170 Indian reservation lands—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.]

17.04.180 County and state lands. Whenever any lands belonging to the county are included within a weed district, the county legislative authority shall determine the amount of the taxes for which the lands would be liable if they were in private ownership, and the county legislative authority shall appropriate from the current expense fund of the county sufficient money to pay such amounts. Whenever any state lands are within any weed district, the county treasurer shall certify annually and forward to the appropriate state agency for payment a statement showing the amount of the tax to which the lands would be liable if they were in private ownership, separately describing each lot or parcel and, if delinquent, with interest and penalties consistent with RCW 84.56.020. [1991 c 245 § 1; 1984 c 7 § 18; 1971 ex.s. c 119 § 1; 1961 c 250 § 4; 1929 c 125 § 8; RRS § 2777. Prior: 1921 c 150 § 7.]

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

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 Appellate review—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

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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 appellate review of the order or decision of the superior court in the manner provided by existing laws, and upon the conclusion of such review, 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. [1988 c 202 § 21; 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 of Appellate Procedure.

Severability—1988 c 202: See note following RCW 2.24.050.

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 col-

lected 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 county with a population of two hundred ten thousand or more 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

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- 17.06.060 Directors powers and duties—Taxation—Treasurer—Costs.
 17.06.070 Actions of county officers—Costs.
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Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

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 department of natural resources at Olympia. [1988 c 128 § 5; 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 17.10

NOXIOUS WEEDS—CONTROL BOARDS

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17.10.007 Purpose—Construction—1975 1st ex.s. c 13. The purpose of this chapter is to limit economic loss and adverse effects to Washington's agricultural, natural, and human resources due to the presence and spread of noxious weeds on all terrestrial and aquatic areas in the state.

The intent of the legislature is that this chapter be liberally construed, and that the jurisdiction, powers, and duties granted to the county noxious weed control boards by this chapter are limited only by specific provisions of this chapter or other state and federal law. [1997 c 353 § 1; 1975 1st ex.s. c 13 § 17. Formerly RCW 17.10.905.]

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

(1) "Noxious weed" means a plant that when established is highly destructive, competitive, or difficult to control by cultural or chemical practices.

(2) "State noxious weed list" means a list of noxious weeds adopted by the state noxious weed control board. The list is divided into three classes:

(a) Class A consists of those noxious weeds not native to the state that are of limited distribution or are unrecorded in the state and that pose a serious threat to the state;

(b) Class B consists of those noxious weeds not native to the state that are of limited distribution or are unrecorded in a region of the state and that pose a serious threat to that region;

(c) Class C consists of any other noxious weeds.

(3) "Person" means any individual, partnership, corporation, firm, the state or any department, agency, or subdivision thereof, or any other entity.

(4) "Owner" means the person in actual control of property, or his or her agent, whether the 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 the easement is deemed, for the purpose of this chapter, an "owner" of the property within the boundaries of the easement.

(5) As pertains to the duty of an owner, the words "control", "contain", "eradicate", and the term "prevent the spread of noxious weeds" means conforming to the standards of noxious weed control or prevention in this chapter or as adopted by rule in chapter 16-750 WAC by the state noxious weed control board and an activated county noxious weed control board.

(6) "Agent" means any occupant or any other person acting for the owner and working or in charge of the land.

(7) "Agricultural purposes" are those that are intended to provide for the growth and harvest of food and fiber.

(8) "Director" means the director of the department of agriculture or the director's appointed representative.

(9) "Weed district" means a weed district as defined in chapters 17.04 and 17.06 RCW.

(10) "Aquatic noxious weed" means an aquatic plant species that is listed on the state weed list under RCW 17.10.080.

(11) "Screenings" means a mixture of mill or elevator run mixture or a combination of varying amounts of materials obtained in the process of cleaning either grain or seeds, or both, such as light or broken grain or seed, weed seeds, hulls, chaff, joints, straw, elevator dust, floor sweepings, sand, and dirt. [1997 c 353 § 2; 1995 c 255 § 6; 1987 c 438 § 1; 1975 1st ex.s. c 13 § 1; 1969 ex.s. c 113 § 1.]

Severability—Effective date—1995 c 255: See RCW 17.26.900 and 17.26.901.

17.10.020 County noxious weed control boards—Created—Jurisdiction—Inactive status. (1) In each county of the state there is created a noxious weed control board, bearing the name of the county within which it is

located. The jurisdictional boundaries of each board are the boundaries of the county within which it is located.

(2) Each noxious weed control board is inactive until activated pursuant to the provisions of RCW 17.10.040. [1997 c 353 § 3; 1969 ex.s. c 113 § 2.]

17.10.030 State noxious weed control board—Members—Terms—Elections—Meetings—Reimbursement for travel expenses. There is created a state noxious weed control board comprised of nine voting members and three nonvoting members. Four of the voting members shall be elected by the members of the various activated county noxious weed control boards, and shall be residents of a county in which a county noxious weed control board has been activated and a member of said board, and those qualifications shall continue through their term of office. Two of these members 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 is a voting member of the board. One voting member shall be elected by the directors of the various active weed districts formed under chapter 17.04 or 17.06 RCW. The Washington state association of counties appoints one voting member who shall be a member of a county legislative authority. The director shall appoint two voting members to represent the public interest, one from the west side and one from the east side of the state. The director shall also appoint three nonvoting members representing scientific disciplines relating to weed control. The term of office for all members of the board is three years from the date of election or appointment.

The board, by rule, shall establish a position number for each elected position of the board and shall designate which county noxious weed control board members are eligible to vote for each elected position. The elected members serve staggered terms. 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 board.

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 chair and other officers as may be necessary. A majority of the voting members of the board constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The members of the board serve without salary, but shall be reimbursed for travel expenses incurred in the performance of their duties under this chapter in accordance with RCW 43.03.050 and 43.03.060. [1997 c 353 § 4; 1987 c 438 § 2; 1975-'76 2nd ex.s. c 34 § 23; 1969 ex.s. c 113 § 3.]

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

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 within sixty days after a petition is filed by one hundred registered voters within the county or, on its own motion, the county legislative authority 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 county legislative authority shall, in the manner provided by RCW 17.10.050, appoint five persons to 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 county legislative authority 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 registered voters 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 the 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 county legislative authority to activate the county's noxious weed control board and to appoint members to the board in the manner provided by RCW 17.10.050.

(3) The director, upon request of the state noxious weed control board, shall order a county legislative authority to activate the noxious weed control board immediately if an infestation of a class A noxious weed or class B noxious weed designated for control on the state noxious weed list is confirmed in that county. The county legislative authority may, as an alternative to activating the noxious weed board, combat the class A noxious weed or class B noxious weed with county resources and personnel operating with the authorities and responsibilities imposed by this chapter on a county noxious weed control board. No county may continue without a noxious weed control board for a second consecutive year if the class A noxious weed or class B noxious weed has not been eradicated. [1997 c 353 § 5; 1987 c 438 § 3; 1975 1st ex.s. c 13 § 2; 1969 ex.s. c 113 § 4.]

17.10.050 Activated county noxious weed control board—Members—Election—Terms—Meetings—Quorum—Expenses—Officers—Vacancy. (1) Each activated county noxious weed control board consists of five voting members appointed by the county legislative authority. In appointing the voting members, the county legislative authority shall divide the county into five geographical areas that best represent the county's interests, and appoint a voting member from each geographical area. At least four of the voting members shall be engaged in the primary production of agricultural products. There is one nonvoting member on the board who is the chair of the county extension office or an extension agent appointed by the chair of the county extension office. Each voting member of the board serves a term of four years, except that the county legislative authority shall, when a board is first activated under this chapter, designate two voting members to serve terms of two years. 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 voting members of the board serve until their replacements are appointed. New members of the board shall be appointed at least thirty days prior to the expiration of any board member's term of office.

Notice of expiration of a term of office shall be published at least twice in a weekly or daily newspaper of general circulation in the section [geographical area] with last publication occurring at least ten days prior to the nomination. All persons interested in appointment to the board and residing in the geographical area with a pending nomination shall make a written application that includes the signatures of at least ten registered voters residing in the geographical area supporting the nomination to the county noxious weed control board. After nominations close, the county noxious weed control board shall, after a hearing, send the applications to the county legislative authority recommending the names of the most qualified candidates, and post the names of those nominees in the county courthouse and publish in at least one newspaper of general circulation in the county. The county legislative authority, within ten days of receiving the list of nominees, shall appoint one of those nominees to the county noxious weed control board to represent that geographical area during that term of office.

(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 constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The board shall elect from its members a chair and other officers as may be necessary.

(4) In case of a vacancy occurring in any voting position on a county noxious weed control board, the county legislative authority of the county in which the board is located shall appoint a qualified person to fill the vacancy for the unexpired term. [1997 c 353 § 6; 1987 c 438 § 4; 1980 c 95 § 1; 1977 ex.s. c 26 § 6; 1975 1st ex.s. c 13 § 3; 1974 ex.s. c 143 § 1; 1969 ex.s. c 113 § 5.]

17.10.060 Activated county noxious weed control board—Weed coordinator—Authority—Rules and regulations. (1) Each activated county noxious weed control board shall employ or otherwise provide a weed coordinator whose duties are fixed by the board but which shall include inspecting land to determine the presence of noxious weeds, offering technical assistance and education, and developing a program to achieve compliance with the weed law. The weed coordinator may be employed full time, part time, or seasonally by the county noxious weed control board. County weed board employment practices shall comply with county personnel policies. Within sixty days from initial employment the weed coordinator shall obtain a pest control consultant license, a pesticide operator license, and the necessary endorsements on the licenses as required by law. Each board may purchase, rent, or lease equipment, facilities, or products and may hire 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 has the power to adopt rules and regulations, subject to notice and hearing as provided in chapters 42.30 and 42.32 RCW, as are necessary for an effective county weed control or eradication program.

(3) Each activated county noxious weed control board shall meet with a quorum at least quarterly. [1997 c 353 § 7; 1987 c 438 § 5; 1969 ex.s. c 113 § 6.]

17.10.070 State noxious weed control board—Powers—Report. (1) In addition to the powers conferred on the state noxious weed control board under other provisions of this chapter, it has the power to:

(a) Employ a state noxious weed control board executive secretary, and additional persons as it deems necessary, to disseminate information relating to noxious weeds to county noxious weed control boards and weed districts, to coordinate the educational and weed control efforts of the various county and regional noxious weed control boards and weed districts, and to assist the board in carrying out its responsibilities;

(b) Adopt, amend, or repeal rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to the board by this chapter.

(2) The state noxious weed control board shall provide a written report before January 1st of each odd-numbered year to the county noxious weed control boards and the weed districts showing the expenditure of state funds on noxious weed control; specifically how the funds were spent; the status of the state, county, and district programs; and recommendations for the continued best use of state funds for noxious weed control. The report shall include recommendations as to the long-term needs regarding weed control. [1998 c 245 § 3; 1997 c 353 § 8; 1987 c 438 § 6; 1975 1st ex.s. c 13 § 4; 1969 ex.s. c 113 § 7.]

17.10.074 Director—Powers. (1) In addition to the powers conferred on the director under other provisions of this chapter, the director, with the advice of the state noxious weed control board, has power to:

(a) Require the county legislative authority or the noxious weed control board of any county or any weed district to report to it concerning the presence, absence, or estimated amount of noxious weeds and measures, if any, taken or planned for the control thereof;

(b) Employ staff as may be necessary in the administration of this chapter;

(c) Adopt, amend, or repeal rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out this chapter;

(d) Do such things as may be necessary and incidental to the administration of its functions pursuant to this chapter including but not limited to surveying for and detecting noxious weed infestations;

(e) Upon receipt of a complaint signed by a majority of the members of an adjacent county noxious weed control board or weed district, or by one hundred registered voters that are land owners within the county, require the county legislative authority or noxious weed control board of the county or weed district that is the subject of the complaint to respond to the complaint within forty-five days with a plan for the control of the noxious weeds cited in the complaint;

(f) If the complaint in (e) of this subsection involves a class A or class B noxious weed, order the county legislative authority, noxious weed control board, or weed district to take immediate action to eradicate or control the noxious weed infestation. If the county or the weed district does not take action to control the noxious weed infestation in

accordance with the order, the director may control it or cause it to be controlled. The county or weed district is liable for payment of the expense of the control work including necessary costs and expenses for attorneys' fees incurred by the director in securing payment from the county or weed district. The director may bring a civil action in a court of competent jurisdiction to collect the expenses of the control work, costs, and attorneys' fees;

(g) In counties without an activated noxious weed control board, enter upon any property as provided for in RCW 17.10.160, issue or cause to be issued notices and citations and take the necessary action to control noxious weeds as provided in RCW 17.10.170, hold hearings on any charge or cost of control action taken as provided for in RCW 17.10.180, issue a notice of civil infraction as provided for in RCW 17.10.230 and 17.10.310 through [and] 17.10.350, and place a lien on any property pursuant to RCW 17.10.280, 17.10.290, and 17.10.300 with the same authorities and responsibilities imposed by these sections on county noxious weed control boards;

(h) Adopt a list of noxious weed seeds and toxic weeds which shall be controlled in designated articles, products, or feed stuffs as provided for in RCW 17.10.235.

(2) The moneys appropriated for noxious weed control to the department shall be used for administration of the state noxious weed control board, the administration of the director's powers under this chapter, the purchase of materials for controlling, containing, or eradicating noxious weeds, the purchase or collection of biological control agents for controlling noxious weeds, and the contracting for services to carry out the purposes of this chapter. In a county with an activated noxious weed control board, the director shall make every effort to contract with that board for the needed services.

(3) If the director determines the need to reallocate funds previously designated for county use, the director shall convene a meeting of the state noxious weed control board to seek its advice concerning any reallocation. [1997 c 353 § 9; 1987 c 438 § 7.]

17.10.080 State noxious weed list—Hearing—Adoption—Dissemination. (1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) Any person may request during a comment period established by the state weed board the inclusion, deletion, or designation change of any plant to the state noxious weed list.

(3) The state noxious weed control board shall send a copy of the list to each activated county noxious weed control board, to each weed district, and to the county legislative authority of each county with an inactive noxious weed control board.

(4) The record of rule making must include the written findings of the board for the inclusion of each plant on the list. The findings shall be made available upon request to any interested person. [1997 c 353 § 10; 1989 c 175 § 57; 1987 c 438 § 8; 1975 1st ex.s. c 13 § 5; 1969 ex.s. c 113 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

17.10.090 State noxious weed list—Selection of weeds for control by county board. Each county noxious weed control board shall, within ninety days of the adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the class C list and those weeds from the class B list not designated for control in the noxious weed control region in which the county lies that it finds necessary to be controlled in the county. The weeds thus selected and all class A weeds and those class B weeds that have been designated for control in the noxious weed control region in which the county lies shall be classified within that county as noxious weeds, and those weeds comprise the county noxious weed list. [1997 c 353 § 11; 1987 c 438 § 9; 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 or weed district to include a 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 registered voters within the county requesting that the weed be listed.

(2) Where the state noxious weed control board receives a request for inclusion from an adjacent county's noxious weed control board or weed district, which the adjacent board or district has included that weed in its county list, and the adjacent board or weed district alleges that its noxious weed control program is being hampered by the failure to include the weed on the county's noxious weed list. [1997 c 353 § 12; 1987 c 438 § 10; 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 the county legislative authority, or the noxious weed control board, or both, 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. The resolution becomes effective only when a similar resolution is adopted by the other county or counties comprising the proposed regional board. [1997 c 353 § 13; 1987 c 438 § 11; 1975 1st ex.s. c 13 § 6; 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 boards comprising the regional board shall still remain in existence and shall retain all powers and duties provided for the boards under this chapter.

The regional noxious weed control board is comprised of the voting members and the nonvoting members of the component counties noxious weed control boards or county

legislative authorities who shall, respectively, be the voting and nonvoting members of the regional board: PROVIDED, That each county shall have an equal number of voting members. The board may appoint other nonvoting members as deemed necessary. A majority of the voting members of the board constitutes a quorum for the transaction of business and is necessary for any action taken by the board. The board shall elect a chair from its members and other officers as may be necessary. Members of the regional board serve without salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties. [1997 c 353 § 14; 1987 c 438 § 12; 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 ninety days of the adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the state list that it finds necessary to be controlled on a regional basis. The weeds thus selected shall also be contained in the county noxious weed list of each county in the region.

(2) The regional board shall take action as may be necessary to coordinate the noxious weed control programs of the region and adopt a regional plan for the control of noxious weeds. [1997 c 353 § 15; 1987 c 438 § 13; 1969 ex.s. c 113 § 13.]

17.10.134 Liability of county and regional noxious weed control boards. Obligations or liabilities incurred by any county or regional noxious weed control board or any claims against a county or regional noxious weed control board are governed by chapter 4.96 RCW or RCW 4.08.120: PROVIDED, That individual members or employees of a county noxious weed control board are personally immune from civil liability for damages arising from actions performed within the scope of their official duties or employment. [1997 c 353 § 16; 1987 c 438 § 14.]

17.10.140 Owner's duty to control spread of noxious weeds. (1) Except as is provided under subsection (2) of this section, every owner shall perform or cause to be performed those acts as may be necessary to:

(a) Eradicate all class A noxious weeds;

(b) Control and prevent the spread of all class B noxious weeds designated for control in that region within and from the owner's property; and

(c) Control and prevent the spread of all class B and class C noxious weeds listed on the county weed list as locally mandated control priorities within and from the owner's property.

(2) Forest lands classified under RCW 17.10.240(2), or meeting the definition of forest lands contained in RCW 17.10.240, are subject to the requirements of subsection (1)(a) and (b) of this section at all times. Forest lands are subject to the requirements of subsection (1)(c) of this section only within a one thousand foot buffer strip of adjacent land uses. In addition, forest lands are subject to subsection (1)(c) of this section for a single five-year period

following the harvesting of trees for lumber. [1997 c 353 § 17; 1969 ex.s. c 113 § 14.]

17.10.145 State agencies' duty to control spread of noxious weeds. All state agencies shall control noxious weeds on lands they own, lease, or otherwise control through integrated pest management practices. Agencies shall develop plans in cooperation with county noxious weed control boards to control noxious weeds in accordance with standards in this chapter. All state agencies' lands must comply with this chapter, regardless of noxious weed control efforts on adjacent lands. [1997 c 353 § 18; 1995 c 374 § 75.]

Effective date—1995 c 374 §§ 69, 70, and 72-79: See note following RCW 16.24.130.

17.10.154 Owners' agreements with county noxious weed control boards—Terms—Enforcement. It is recognized that the prevention, control, and eradication of noxious weeds presents a problem for immediate as well as for future action. It is further recognized that immediate prevention, control, and eradication is practicable on some lands and that prevention, control, and eradication on other lands should be extended over a period of time. Therefore, it is the intent of this chapter that county noxious weed control boards may use their discretion and, by agreement with the owners of land, may propose and accept plans for prevention, control, and eradication that may be extended over a period of years. The county noxious weed control board may make an agreement with the owner of any parcel of land by contract between the landowner and the respective county noxious weed control board, and the board shall enforce the terms of any agreement. The county noxious weed control board may make any terms that will best serve the interests of the owners of the parcel of land and the common welfare that comply with this chapter. Agreements made under this section must include at least a one thousand foot buffer for all adjacent agricultural land uses. Noxious weed control in this buffer must comply with RCW 17.10.140(1). [1997 c 353 § 19; 1987 c 438 § 16.]

17.10.160 Right of entry—Warrant for noxious weed search—Civil liability—Penalty for preventing entry. 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 where not otherwise proscribed by law 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, general inspection, and the performance of eradication or control work. Prior to carrying out the purpose for which the entry is made, the official making such entry or someone in his or her behalf, shall make a reasonable attempt to notify the owner of the property as to the purpose and need for the entry.

(1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution upon which noxious weeds are standing or growing and the owner refuses permission to inspect the property, a judge of the superior court or district court in the county in which the property is located may, upon the

request of the county noxious weed control board or its agent, issue a warrant directed to the board or agent authorizing the taking of specimens of weeds or other materials, general inspection, and the performance of eradication or control work.

(2) Application for issuance and execution and return of the warrant authorized by this section shall be in accordance with the applicable rules of the superior court or the district courts.

(3) Nothing in this section requires the application for and issuance of any warrant not otherwise required by law: PROVIDED, 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.

(4) Any person who improperly prevents or threatens to prevent entry upon land as authorized in this section or any person who interferes with the carrying out of this chapter shall be upon conviction guilty of a misdemeanor. [1997 c 353 § 20; 1987 c 438 § 17; 1969 ex.s. c 113 § 16.]

17.10.170 Finding presence of noxious weeds—Notice for failure of owner to control—Control by county board—Liability of owner—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 is not taking prompt and sufficient action to control the noxious weeds, pursuant to the provisions of RCW 17.10.140, it shall notify the owner that a violation of this chapter exists. The notice shall be in writing and sent by certified mail, and shall identify the noxious weeds found to be present, order prompt control action, and specify the time, of at least ten days from issuance of the notice, within which the prescribed action must be taken. Upon deposit of the certified letter of notice, the noxious weed control authority shall make an affidavit of mailing that is prima facie evidence that proper notice was given. If seed or other propagule dispersion is imminent, immediate control action may be taken forty-eight hours following the time that notification is reasonably expected to have been received by the owner or agent by certified mail or personal service, instead of ten days. If a landowner received a notice of violation from the county noxious weed control board in a prior growing season, removal or destruction of all above ground plant parts may be required at the most effective point in the growing season, as determined by the county weed board, which may be before or after propagule dispersion.

(2) The county noxious weed control board or its authorized agents may issue a notice of civil infraction as provided for in RCW 17.10.230, 17.10.310, and 17.10.350 to owners who do not take action to control noxious weeds in accordance with the notice.

(3) If the owner does not take action to control the noxious weeds in accordance with the notice, the county board may control them, or cause their being controlled, at the expense of the owner. The amount of the expense constitutes a lien against the property and may be enforced by proceedings on the lien except as provided for by RCW 79.44.060. The owner is 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. Necessary costs and expenses including reasonable attorneys' fees incurred by the county noxious weed control board in carrying out this section may be recovered at the same time as a part of the action filed under this section. Funds received in payment for the expense of controlling noxious weeds shall be transferred to the county noxious weed control board to be expended as required to carry out the purposes of this chapter.

(4) The county auditor shall record in his or her office any lien created under this chapter, and any lien shall bear interest at the rate of twelve percent per annum from the date on which the county noxious weed control board approves the amount expended in controlling the weeds.

(5) As an alternative to the enforcement of any lien created under subsection (3) of this section, the county legislative authority may by resolution or ordinance require that each lien created 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 bear interest at the rate of twelve percent per annum and the interest accrues as of the date notice of the lien is sent to the owner: PROVIDED, That any collections for the lien shall not be considered as tax. [1997 c 353 § 21; 1987 c 438 § 18; 1979 c 118 § 1; 1975 1st ex.s. c 13 § 8; 1974 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, is entitled to a hearing before the board on any charge or cost for which the owner is alleged to be liable pursuant to RCW 17.10.170 or 17.10.210. The board shall send notice by certified mail within thirty days, to each owner at the owner's last known address, as to any charge or cost and as to his or her right of a hearing. The hearing shall be scheduled within forty-five days of notification. Any determination or final action by the board is subject to judicial review by a proceeding in the superior court in the county in which the property is located, and the court has 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 control work subsequent to notice given pursuant to RCW 17.10.160 or pursuant to an order under RCW 17.10.210. [1997 c 353 § 22; 1987 c 438 § 19; 1969 ex.s. c 113 § 18.]

17.10.190 Notice and information as to noxious weed control. Each activated county noxious weed control board must publish annually, and at other times as may be appropriate, in at least one newspaper of general circulation within its area, a general notice. The notice shall direct attention to the need for noxious weed control and give other information concerning noxious weed control requirements as may be appropriate, or indicate where such information may be secured. In addition to the general notice required, the county noxious weed control board may use any appro-

appropriate 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. The methods may include some combination of physical, mechanical, cultural, chemical, and/or biological methods, including livestock. Publication of a notice as required by this section is not a condition precedent to the enforcement of this chapter. [1997 c 353 § 23; 1987 c 438 § 20; 1975 1st ex.s. c 13 § 9; 1969 ex.s. c 113 § 19.]

17.10.201 Noxious weed control on federal and tribal lands—State and county cooperation. (1) The state noxious weed control board shall:

(a) Work with the various federal and tribal land management agencies to coordinate state and federal noxious weed control;

(b) Encourage the various federal and tribal land management agencies to devote more time and resources to noxious weed control; and

(c) Assist the various federal and tribal land management agencies by seeking adequate funding for noxious weed control.

(2) County noxious weed control boards and weed districts shall work with the various federal and tribal land management agencies in each county in order to:

(a) Identify new noxious weed infestations;

(b) Outline and plan necessary noxious weed control actions;

(c) Develop coordinated noxious weed control programs; and

(d) Notify local federal and tribal agency land managers of noxious weed infestations.

(3) The department of agriculture, county noxious weed control boards, and weed districts are authorized to enter federal lands, with the approval of the appropriate federal agency, to survey for and control noxious weeds where control measures of a type and extent required under this chapter have not been taken.

(4) The department of agriculture, county noxious weed control boards, and weed districts may bill the federal land management agency that manages the land for all costs of the noxious weed control performed on federal land. If not paid by the federal agency that manages the land, the cost of the noxious weed control on federal land may be paid from any funds available to the county noxious weed control board or weed district that performed the noxious weed control. Alternatively, the costs of noxious weed control on federal land may be paid from any funds specifically appropriated to the department of agriculture for that purpose.

(5) The department of agriculture, county noxious weed control boards, and weed districts are authorized to enter into any reasonable agreement with the appropriate authorities for the control of noxious weeds on federal or tribal lands.

(6) The department of agriculture, county noxious weed control boards, and weed districts shall consult with state

agencies managing federal land concerning noxious weed infestation and control programs. [1997 c 353 § 34.]

17.10.205 Control of noxious weeds in open areas. Open areas subject to the spread of noxious weeds, including but not limited to subdivisions, school grounds, playgrounds, parks, and rights of way shall be subject to regulation by activated county noxious weed control boards in the same manner and to the same extent as is provided for all terrestrial and aquatic lands of the state. [1997 c 353 § 24; 1975 1st ex.s. c 13 § 16.]

17.10.210 Quarantine of land—Order—Expense. (1) Whenever the director, the county noxious weed control board, or a weed district finds that a parcel of land is so seriously infested with class A or class B noxious weeds that control measures cannot be undertaken thereon without quarantining the land and restricting or denying access thereto or use thereof, the director, the county noxious weed control board, or weed district, with the approval of the director of the department of agriculture, may issue an order for the quarantine and restriction or denial of access or use. Upon issuance of the order, the director, the county noxious weed control board, or the weed district shall commence necessary control measures and may institute legal action for the collection of costs for control work, which may include attorneys' fees and the costs of other appropriate actions.

(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 director shall, with the advice of the state noxious weed control board, determine how the expense of control work undertaken pursuant to this section, and the cost of any quarantine in connection therewith, is apportioned. [1997 c 353 § 25; 1987 c 438 § 22; 1969 ex.s. c 113 § 21.]

17.10.230 Violations—Penalty. Any owner knowing of the existence of any noxious weeds on the owner's land who fails to control such weeds in accordance with this chapter and rules and regulations in force pursuant thereto; or any person who enters upon any land in violation of an order in force pursuant to RCW 17.10.210; or any person who interferes with the carrying out of the provisions of this chapter has committed a civil infraction. [1987 c 438 § 23; 1979 c 118 § 2; 1969 ex.s. c 113 § 23.]

17.10.235 Selling product, article, or feed containing noxious weed seeds or toxic weeds—Penalty—Rules—Inspections—Fees. (1) The director of agriculture shall adopt, with the advice of the state noxious weed control board, rules designating noxious weed seeds which shall be controlled in products, screenings, or articles to prevent the spread of noxious weeds. The rules shall identify the products, screenings, and articles in which the seeds must be controlled and the maximum amount of the seed to be permitted in the product, screenings, or article to avoid a hazard of spreading the noxious weed by seed from the product, screenings, or article. The director shall also adopt, with the advice of the state board, rules designating toxic

weeds which shall be controlled in feed stuffs and screenings to prevent injury to the animal that consumes the feed. The rules shall identify the feed stuffs and screenings in which the toxic weeds must be controlled and the maximum amount of the toxic weed to be permitted in the feed. Rules developed under this section shall identify ways that products, screenings, articles, or feed stuffs containing noxious weed seeds or toxic weeds can be made available for beneficial uses.

(2) Any person who knowingly or negligently sells or otherwise distributes a product, article, screenings, or feed stuff designated by rule containing noxious weed seeds or toxic weeds designated for control by rule and in an amount greater than the amount established by the director for the seed or weed by rule is guilty of a misdemeanor.

(3) The department of agriculture shall, upon request of the buyer, inspect products, screenings, articles, or feed stuffs designated by rule and charge fees, in accordance with chapter 22.09 RCW, to determine the presence of designated noxious weed seeds or toxic weeds. [1997 c 353 § 26; 1987 c 438 § 30; 1979 c 118 § 4.]

17.10.240 Special assessments, appropriations for noxious weed control—Assessment rates. (1) The activated county noxious weed control board of each county shall annually submit a budget to the county legislative authority for the operating cost of the county's weed program for the ensuing fiscal year: PROVIDED, That if the board finds the budget approved by the legislative authority is insufficient for an effective county noxious weed control program it shall petition the county legislative authority to hold a hearing as provided in RCW 17.10.890. Control of weeds is a benefit to the lands within any such section. Funding for the budget is derived from any or all of the following:

(a) The county legislative authority may, in lieu of a tax, levy an assessment against the land for this purpose. Prior to the levying of an assessment the county noxious weed control board shall hold a public hearing at which it will gather information to serve as a basis for classification and then classify the lands into suitable classifications, including but not limited to dry lands, range lands, irrigated lands, nonuse lands, forest lands, or federal lands. The board shall develop and forward to the county legislative authority, as a proposed level of assessment for each class, an amount as seems just. The assessment rate shall be either uniform per acre in its respective class or a flat rate per parcel rate plus a uniform rate per acre: PROVIDED, That if no benefits are found to accrue to a class of land, a zero assessment may be levied. The county legislative authority, upon receipt of the proposed levels of assessment from the board, after a hearing, shall accept or modify by resolution, or refer back to the board for its reconsideration all or any portion of the proposed levels of assessment. The amount of the assessment constitutes a lien against the property. The county legislative authority may by resolution or ordinance require that notice of the lien be sent to each owner of property for which the assessment has not been paid by the date it was due and that each lien created be collected by the treasurer in the same manner as 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 bear interest at the rate of twelve percent per annum and the interest accrues as of the date notice of the lien is sent to the owner: PROVIDED FURTHER, That any collections for the lien shall not be considered as tax; or

(b) The county legislative authority may appropriate money from the county general fund necessary for the administration of the county noxious weed control program. In addition the county legislative authority may make emergency appropriations as it deems necessary for the implementation of this chapter.

(2) Forest lands used solely for the planting, growing, or harvesting of trees and which are typified, except during a single period of five years following clear-cut logging, by canopies so dense as to prohibit growth of an understory may be subject to an annual noxious weed assessment levied by a county legislative authority that does not exceed one-tenth of the weighted average per acre noxious weed assessment levied on all other lands in unincorporated areas within the county that are subject to the weed assessment. This assessment shall be computed in accordance with the formula in subsection (3) of this section.

(3) The calculation of the "weighted average per acre noxious weed assessment" is a ratio expressed as follows:

(a) The numerator is the total amount of funds estimated to be collected from the per acre assessment on all lands except (i) forest lands as identified in subsection (2) of this section, (ii) lands exempt from the noxious weed assessment, and (iii) lands located in an incorporated area.

(b) The denominator is the total acreage from which funds in (a) of this subsection are collected. For lands of less than one acre in size, the denominator calculation may be based on the following assumptions: (i) Unimproved lands are calculated as being one-half acre in size on the average, and (ii) improved lands are calculated as being one-third acre in size on the average. The county legislative authority may choose to calculate the denominator for lands of less than one acre in size using other assumptions about average parcel size based on local information.

(4) For those counties that levy a per parcel assessment to help fund noxious weed control programs, the per parcel assessment on forest lands as defined in subsection (2) of this section shall not exceed one-tenth of the per parcel assessment on nonforest lands. [1997 c 353 § 27; 1995 c 374 § 77; 1987 c 438 § 31; 1975 1st ex.s. c 13 § 10; 1969 ex.s. c 113 § 24.]

Effective date—1995 c 374 §§ 69, 70, and 72-79: See note following RCW 16.24.130.

17.10.250 Applications for noxious weed control funds. The legislative authority of any county with an activated noxious weed control board or the board of any weed district may apply to the director for noxious weed control funds when informed by the director that funds are available. Any applicant must employ adequate administrative personnel to supervise an effective weed control program as determined by the director with advice from the state noxious weed control board. The director with advice from the state noxious weed control board shall adopt rules on the distribution and use of noxious weed control account

funds. [1997 c 353 § 28; 1987 c 438 § 32; 1975 1st ex.s. c 13 § 11; 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 other acts. 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 34.05 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, the Washington pesticide control act, chapter 15.58 RCW, and the Washington pesticide application act, chapter 17.21 RCW. [1987 c 438 § 33; 1969 ex.s. c 113 § 28.]

17.10.270 Noxious weed control boards—Authority to obtain insurance or surety bonds. Each noxious weed control board may obtain such insurance or surety bonds, or both 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. [1987 c 438 § 34; 1974 ex.s. c 143 § 5.]

17.10.280 Lien for labor, material, equipment used in controlling noxious weeds. Every activated county noxious weed control board performing labor, furnishing material, or renting, leasing or otherwise supplying equipment, to be used in the control of noxious weeds, or in causing control of noxious weeds, upon any property pursuant to the provisions of chapter 17.10 RCW has a lien upon such property for the labor performed, material furnished, or equipment supplied whether performed, furnished, or supplied with the consent of the owner, or his agent, of such property, or without the consent of said owner or agent. [1987 c 438 § 35; 1975 1st ex.s. c 13 § 13.]

17.10.290 Lien for labor, material, equipment used in controlling noxious weeds—Notice of lien. Every county noxious weed control board furnishing labor, materials, or supplies or renting, leasing, or otherwise supplying equipment to be used in the control of noxious weeds upon any property pursuant to RCW 17.10.160 and 17.10.170 or pursuant to an order under RCW 17.10.210 as now or hereafter amended, shall give to the owner or reputed owner or his agent a notice in writing, within ninety days from the date of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, which notice shall cover the labor, material, supplies, or equipment furnished or leased, as well as all subsequent labor, materials, supplies, or equipment furnished or leased, stating in substance and effect that such county noxious weed control board is furnishing or has furnished labor, materials and supplies or equipment for use thereon, with the name of the county noxious weed control board ordering the same, and that a lien may be claimed for all materials and supplies or equipment furnished by such

county noxious weed control board for use thereon, which notice shall be given by mailing the same by registered or certified mail in an envelope addressed to the owner at his place of residence or reputed residence. [1987 c 438 § 36; 1975 1st ex.s. c 13 § 14.]

17.10.300 Lien for labor, material, equipment used in controlling noxious weeds—Claim—Filing—Contents. No lien created by RCW 17.10.280 exists, and no action to enforce the same shall be maintained, unless within ninety days from the date of cessation of the performance of the labor, furnishing of materials, or the supplying of equipment, a claim for the lien is filed for record as provided in this section, in the office of the county auditor of the county in which the property, or some part of the property to be affected by the claim for a lien, is situated. The claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the name of the county noxious weed control board that performed the labor or caused the labor to be performed, furnished the material, or supplied the equipment, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, or his or her agent, and if the owner is not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the county noxious weed control board, and be verified by the oath of the county noxious weed control board, to the effect that the affiant believes that claim to be just; and the claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, insofar as the interest of third parties shall not be affected by such an amendment. [1997 c 353 § 29; 1975 1st ex.s. c 13 § 15.]

17.10.310 Notice of infraction—Issuance. The county noxious weed control board may issue a notice of civil infraction if after investigation it has reasonable cause to believe an infraction has been committed. A civil infraction may be issued pursuant to RCW 7.80.005, 7.80.070 through 7.80.110, 7.80.120 (3) and (4), and 7.80.130 through 7.80.900. [1997 c 353 § 30; 1987 c 438 § 24.]

17.10.350 Infraction—Penalty. Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty not to exceed one thousand dollars. The state noxious weed control board shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and submit the schedule to the appropriate court. If a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid. Failure to pay any monetary penalties imposed under this chapter is punishable as a misdemeanor. [1997 c 353 § 31; 1987 c 438 § 28.]

17.10.890 Deactivation of county noxious weed control board—Hearing. The following procedures shall

be followed to deactivate a county noxious weed control board:

(1) The county legislative authority holds a hearing to determine whether there continues to be a need for an activated county noxious weed control board if:

(a) A petition is filed by one hundred registered voters within the county;

(b) A petition is filed by a county noxious weed control board as provided in RCW 17.10.240; or

(c) The county legislative authority passes a motion to hold such a hearing.

(2) Except as provided in subsection (4) of this section, the hearing shall be held within sixty days of final action taken under subsection (1) of this section.

(3) If, after a hearing, the county legislative authority determines that no need exists for a county noxious weed control board, due to the absence of class A or class B noxious weeds designated for control in the region, the county legislative authority shall deactivate the board.

(4) The county legislative authority shall not convene a hearing as provided for in subsection (1) of this section more frequently than once a year. [1997 c 353 § 32; 1987 c 438 § 37.]

17.10.900 Weed districts—Continuation—Dissolution—Transfer of assessment funds. Any weed district formed under chapter 17.04 or 17.06 RCW prior to the enactment of this chapter, continues 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 noxious weed control board upon its own motion, petition the county legislative authority for a dissolution of the weed district, the county legislative authority 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 the weed district will continue to operate under the chapter it was formed. The land area of any dissolved weed district becomes subject to the provisions of this chapter. Any district assessment funds may be transferred after the dissolution election under contract to the county noxious weed control board to fund the noxious weed control program. [1997 c 353 § 33; 1987 c 438 § 38; 1975 1st ex.s. c 13 § 12; 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.
- 17.12.050 Treasurer—Tax levies.

- 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.

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 Washington State University 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. [1977 ex.s. c 169 § 4; 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.

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

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 17.15

INTEGRATED PEST MANAGEMENT

Sections

- 17.15.005 Legislative declaration.
- 17.15.010 Definitions.
- 17.15.020 Implementation of integrated pest management practices.
- 17.15.030 Integrated pest management training—Designated coordinator—Representation on interagency coordinating committee.
- 17.15.040 Interagency integrated pest management coordinating committee—Creation—Composition—Duties—Public notice—Progress reports.

17.15.005 Legislative declaration. The legislature declares that it is the policy of the state of Washington to require all state agencies that have pest control responsibilities to follow the principles of integrated pest management. [1997 c 357 § 1.]

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

(1) "Integrated pest management" means a coordinated decision-making and action process that uses the most appropriate pest control methods and strategy in an environmentally and economically sound manner to meet agency programmatic pest management objectives. The elements of integrated pest management include:

- (a) Preventing pest problems;
- (b) Monitoring for the presence of pests and pest damage;
- (c) Establishing the density of the pest population, that may be set at zero, that can be tolerated or correlated with a damage level sufficient to warrant treatment of the problem based on health, public safety, economic, or aesthetic thresholds;
- (d) Treating pest problems to reduce populations below those levels established by damage thresholds using strategies that may include biological, cultural, mechanical, and chemical control methods and that must consider human health, ecological impact, feasibility, and cost-effectiveness; and
- (e) Evaluating the effects and efficacy of pest treatments.

(2) "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, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director of the department of agriculture may declare to be a pest. [1997 c 357 § 2.]

17.15.020 Implementation of integrated pest management practices. Each of the following state agencies or institutions shall implement integrated pest management practices when carrying out the agency's or institution's duties related to pest control:

- (1) The department of agriculture;
- (2) The state noxious weed control board;
- (3) The department of ecology;
- (4) The department of fish and wildlife;
- (5) The department of transportation;
- (6) The parks and recreation commission;
- (7) The department of natural resources;
- (8) The department of corrections;
- (9) The department of general administration; and
- (10) Each state institution of higher education, for the institution's own building and grounds maintenance. [1997 c 357 § 3.]

17.15.030 Integrated pest management training—Designated coordinator—Representation on interagency coordinating committee. (1) A state agency or institution listed in RCW 17.15.020 shall provide integrated pest management training for employees responsible for pest management. The training programs shall be developed in cooperation with the interagency integrated pest management coordinating committee created under RCW 17.15.040.

(2) A state agency or institution listed in RCW 17.15.020 shall designate an integrated pest management coordinator and the department of labor and industries and the office of the superintendent of public instruction shall each designate one representative to serve on the committee established in RCW 17.15.040. [1997 c 357 § 4.]

17.15.040 Interagency integrated pest management coordinating committee—Creation—Composition—Duties—Public notice—Progress reports. (1) The interagency integrated pest management coordinating committee is created. The committee is composed of the integrated pest management coordinator from each agency or institution listed under RCW 17.15.020 and the representatives designated under RCW 17.15.030. The coordinator from the department of agriculture shall serve as chair of the committee.

(2) The interagency integrated pest management coordinating committee shall share information among the state agencies and institutions and facilitate interagency coordination.

(3) The interagency integrated pest management coordinating committee shall meet at least two times a year. All meetings of the committee must be open to the public. The committee shall give public notice of each meeting.

(4) By November 30th of each odd-numbered year up to and including November 30th, 2001, the department of agriculture, with the advice of the interagency integrated pest management coordinating committee, shall prepare a report on the progress of integrated pest management programs. The report is to be made available through the state library and placed on the legislative alert list. [1997 c 357 § 5.]

Chapter 17.21

WASHINGTON PESTICIDE APPLICATION ACT

Sections	
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- 17.21.220 Application of chapter to governmental entities—Public operator license required—Exemption—Liability.
- 17.21.230 Pesticide advisory board.
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- 17.21.900 Preexisting liabilities not affected.
- 17.21.920 Short title.
- 17.21.930 Severability—1961 c 249.
- 17.21.931 Severability—1967 c 177.
- 17.21.932 Severability—1979 c 92.
- 17.21.933 Severability—1989 c 380.

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

(1) "Agricultural commodity" means any plant or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Agricultural land" means land on which an agricultural commodity is produced or land that is in a government-recognized conservation reserve program. This definition does not apply to private gardens where agricultural commodities are produced for personal consumption.

(3) "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, or any other small equipment, device, or contrivance that is transported in a piece of equipment licensed under this chapter as an apparatus.

(4) "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.

(5) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA or the director as a restricted use pesticide.

(6) "Commercial pesticide applicator" means any person who engages in the business of applying pesticides to the land of another.

(7) "Commercial pesticide operator" means any employee of a commercial pesticide applicator who uses or supervises the use of any pesticide and who is required to be licensed under provisions of this chapter.

(8) "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.

(9) "Department" means the Washington state department of agriculture.

(10) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(11) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(12) "Direct supervision" by certified private applicators shall mean that the designated restricted use pesticide shall be applied for purposes of producing any agricultural commodity on land owned or rented by the applicator or the applicator's employer, by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though such certified private applicator is not physically present at the time and place the pesticide is applied. The certified private applicator shall have direct management responsibility and familiarity of the pesticide, manner of application, pest, and land to which the pesticide is being applied. Direct supervision by all other certified applicators means direct on-the-job supervision and shall require that the certified applicator be physically present at the application site and that the person making the application be in voice and visual contact with the certified applicator at all times during the application.

Direct supervision of an aerial apparatus means the pilot of the aircraft must be appropriately certified.

(13) "Director" means the director of the department or a duly authorized representative.

(14) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(15) "EPA" means the United States environmental protection agency.

(16) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

(17) "FIFRA" means the federal insecticide, fungicide and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(18) "Fumigant" means any pesticide product or combination of products that is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

(19) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, and yeasts, except those on or in a living person or other animals.

(20) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(21) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed or other higher plant.

(22) "Immediate service call" means a landscape application to satisfy an emergency customer request for service, or a treatment to control a pest to landscape plants.

(23) "Insect" means any small invertebrate animal, in any life stage, whose adult form is segmented and which generally belongs to the class insecta, comprised of six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies. The term insect shall also apply to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(24) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect.

(25) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices, and contrivances, appurtenant to or situated on, fixed or mobile, including any used for transportation.

(26) "Landscape application" means an application by a certified applicator of any EPA registered pesticide to any exterior landscape plants found around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by certified private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

(27) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(28) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts. Nematodes may also be called nemas or eelworms.

(29) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(30) "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, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director may declare to be a pest.

(31) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any pest;

(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 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.

(32) "Pesticide advisory board" means the pesticide advisory board as provided for in this chapter.

(33) "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 their produce, 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.

(34) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide, for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

(35) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

(36) "Residential property" includes property less than one acre in size zoned as residential by a city, town, or county, but does not include property zoned as agricultural or agricultural homesites.

(37) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse

effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(38) "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 rule to be a pest.

(39) "Snails or slugs" include all harmful mollusks.

(40) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(41) "Weed" means any plant which grows where it is not wanted. [1994 c 283 § 1; 1992 c 176 § 1; 1989 c 380 § 33; 1979 c 92 § 1; 1971 ex.s. c 191 § 1; 1967 c 177 § 2; 1961 c 249 § 2.]

17.21.030 Director's authority—Rules. The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter.

(1) The director may adopt rules:

(a) Governing the loading, mixing, application and use, or prohibiting the loading, mixing, application, or use of any pesticide;

(b) Governing the time when, and the conditions under which restricted use pesticides shall or shall not be used in different areas as prescribed by the director 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 the director's 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;

(d) Establishing recordkeeping requirements for licensees, permittees, and certified applicators;

(e) Fixing and collecting examination fees and fees for recertification course sponsorship;

(f) Establishing testing procedures, licensing classifications, and requirements for licenses and permits, and criteria for assigning recertification credit to and procedures for department approval of courses as provided by this chapter;

(g) Concerning training by employers for employees who mix and load pesticides;

(h) Concerning minimum performance standards for spray boom and nozzles used in pesticide applications to minimize spray drift and establishing a list of approved spray nozzles that meet these standards; and

(i) Fixing and collecting permit fees.

(2) The director may adopt any other rules necessary to carry out the purpose and provisions of this chapter. [1994 c 283 § 2; 1989 c 380 § 34; 1987 c 45 § 26; 1979 c 92 § 2; 1961 c 249 § 3.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

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 34.05 RCW as enacted or hereafter amended, concerning the adoption of rules. [1989 c 380 § 35; 1961 c 249 § 4.]

17.21.050 Hearings—Administrative procedure act.

All hearings for the imposition of a civil penalty and/or the suspension, denial, or revocation of a license, certification, or permit issued under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. [1994 c 283 § 3. Prior: 1989 c 380 § 36; 1989 c 175 § 58; 1985 c 158 § 4; 1961 c 249 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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, certification, 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. [1994 c 283 § 4; 1961 c 249 § 6.]

17.21.065 Classification of licenses. The director may classify licenses to be issued under the provisions of this chapter. These classifications may include but are not 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. 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. [1994 c 283 § 5; 1967 c 177 § 17.]

17.21.070 Commercial pesticide applicator license—Requirements. It shall be unlawful for any person to engage in the business of applying pesticides to the land of another without a commercial pesticide applicator license. Application for a commercial applicator license shall be accompanied by a fee of one hundred seventy dollars and in addition a fee of twenty 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. [1997 c 242 § 11; 1994 c 283 § 6; 1993 sp.s. c 19 § 4; 1991 c 109 § 30; 1989 c 380 § 37; 1981 c 297 § 21; 1967 c 177 § 3; 1961 c 249 § 7.]

Effective date—1997 c 242: See note following RCW 15.58.070.

Severability—1981 c 297: See note following RCW 15.36.201.

17.21.080 Commercial pesticide applicator license—Application—Form. Application for a commercial pesticide applicator license provided for in RCW 17.21.070 shall be on a form prescribed by the director.

(1) The application shall include the following information:

(a) The full name of the individual applying for such license.

(b) The full name of the business the individual represents with the license.

(c) 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.

(d) The principal business address of the applicant in the state or elsewhere.

(e) 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.

(f) The model, make, horsepower, and size of any apparatus used by the applicant to apply pesticides.

(g) License classification or classifications for which the applicant is applying.

(h) A list of the names of individuals allowed to apply pesticides under the authority of the commercial applicator's license.

(i) Any other necessary information prescribed by the director.

(2) Any changes to the information provided on the prescribed commercial applicator form shall be reported by the business to the department within thirty days of the change. [1994 c 283 § 7; 1989 c 380 § 38; 1967 c 177 § 4; 1961 c 249 § 8.]

17.21.091 Commercial pesticide applicator license—

Persons who may apply under license authority. (1) No commercial pesticide applicator shall allow a person to apply pesticides under the authority of the commercial pesticide applicator's license unless the commercial pesticide applicator has, by mail or facsimile transmissions, submitted the name to the department on a form prescribed by the department as provided in RCW 17.21.080(2). The department shall maintain a list for each commercial pesticide applicator of persons authorized to apply pesticides under the authority of the commercial pesticide applicator's license.

(2) Violations of this chapter by a person acting as an employee, agent, or otherwise acting on behalf of or under the license authority of a commercial pesticide applicator, may, in the discretion of the department, be treated as a violation by the commercial pesticide applicator. [1994 c 283 § 8.]

17.21.100 Recordkeeping by licensees and agricultural users.

(1) Certified applicators licensed under the provisions of this chapter, persons required to be licensed under this chapter, all persons applying pesticides to more than one acre of agricultural land in a calendar year, including public entities engaged in roadside spraying of pesticides, and all other persons making landscape applications of pesticides to types of property listed in RCW 17.21.410(1) (b), (c), (d), and (e), shall keep records for each application which shall include the following information:

(a) The location of the land where the pesticide was applied;

(b) The year, month, day and beginning and ending time of the application of the pesticide each day the pesticide was applied;

(c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide which was applied;

(d) The crop or site to which the pesticide was applied;

(e) The amount of pesticide applied per acre or other appropriate measure;

(f) The concentration of pesticide that was applied;

(g) The number of acres, or other appropriate measure, to which the pesticide was applied;

(h) The licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application and their license number, if applicable;

(i) The direction and estimated velocity of the wind during the time the pesticide was applied. This subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and

(j) Any other reasonable information required by the director in rule.

(2)(a) The required information shall be recorded on the same day that a pesticide is applied.

(b) A commercial pesticide applicator who applies a pesticide to an agricultural crop or agricultural lands shall provide a copy of the records required under subsection (1) of this section for the application to the owner, or to the lessee if applied on behalf of the lessee, of the lands to which the pesticide is applied. Records provided by a commercial pesticide applicator to the owner or lessee of agricultural lands under this subsection need not be provided on a form adopted by the department.

(3) The records required under this section shall be maintained and preserved by the licensed pesticide applicator or such other person or entity applying the pesticides for no less than seven years from the date of the application of the pesticide to which such records refer. If the pesticide was applied by a commercial pesticide applicator to the agricultural crop or agricultural lands of a person who employs one or more employees, as "employee" is defined in RCW 49.70.020, the records shall also be kept by the employer for a period of seven years from the date of the application of the pesticide to which the records refer.

(4)(a) The pesticide records shall be readily accessible to the department for inspection. Copies of the records shall be provided on request to: The department; the department of labor and industries; treating health care personnel initiating diagnostic testing or therapy for a patient with a suspected case of pesticide poisoning; the department of health; the pesticide incident reporting and tracking review panel; and, in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, the employee or the employee's designated representative. In addition, the director may require the submission of the records on a routine basis within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of the restricted use pesticide. When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided

immediately. For all other requests, copies of the record shall be provided within seventy-two hours.

(b) Copies of records provided to a person or entity under this subsection (4) shall, if so requested, be provided on a form adopted under subsection (7) of this section. Information for treating health care personnel shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(5) If a request for a copy of the record is made under this section from an applicator referred to in subsection (1) of this section and the applicator refuses to provide a copy, the requester may notify the department of the request and the applicator's refusal. Within seven working days, the department shall request that the applicator provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The applicator shall provide copies of the records to the department within twenty-four hours after the department's request.

(6) The department shall include inspection of the records required under this section as part of any on-site inspection conducted under this chapter on agricultural lands. The inspection shall determine whether the records are readily transferable to a form adopted by the department and are readily accessible to employees. However, no person subject to a department inspection may be inspected under this subsection (6) more than once in any calendar year, unless a previous inspection has found recordkeeping violations. If recordkeeping violations are found, the department may conduct reasonable multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (6) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(7) The department of agriculture and the department of labor and industries shall jointly adopt, by rule, forms that satisfy the information requirements of this section. [1994 c 283 § 9; 1992 c 173 § 1; 1989 c 380 § 39; 1987 c 45 § 28; 1971 ex.s. c 191 § 3; 1961 c 249 § 10.]

Effective dates—1992 c 173: "(1) Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1992].

(2) Section 4 of this act shall take effect January 1, 1993." [1992 c 173 § 5.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

17.21.110 Commercial pesticide operator license—Requirements. It shall be unlawful for any person to act as an employee of a commercial 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 a commercial pesticide operator license from the director. The commercial pesticide operator license shall be in addition to any other license or permit required by law for the operation or use of any such apparatus. Application for a commercial operator license shall be accompanied by a fee of fifty dollars. The provisions of this section shall not apply to any individual who is a licensed commercial pesticide applicator. [1997 c 242 §

12; 1994 c 283 § 10; 1993 sp.s. c 19 § 5; 1992 c 170 § 5; 1991 c 109 § 31; 1989 c 380 § 40; 1981 c 297 § 22; 1967 c 177 § 6; 1961 c 249 § 11.]

Effective date—1997 c 242: See note following RCW 15.58.070.

Severability—1981 c 297: See note following RCW 15.36.201.

17.21.122 Private-commercial pesticide applicator license—Requirements. It shall be unlawful for any person to act as a private-commercial pesticide applicator without having obtained a private-commercial pesticide applicator license from the director. Application for a private-commercial pesticide applicator license shall be accompanied by a fee of twenty-five dollars. [1997 c 242 § 13; 1994 c 283 § 11; 1993 sp.s. c 19 § 6; 1992 c 170 § 6; 1991 c 109 § 32; 1989 c 380 § 41; 1979 c 92 § 6.]

Effective date—1997 c 242: See note following RCW 15.58.070.

17.21.126 Private pesticide applicators—Requirements. It shall be unlawful for any person to act as a private pesticide applicator without first complying with requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the pesticide applicator or other persons, for each specific pesticide use.

(1) Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides for which the private pesticide applicator is certified shall be relative to hazards of the particular type of application, class of pesticides, or handling procedure. In determining these standards the director shall take into consideration standards of the EPA and is authorized to adopt these standards by rule.

(2) Application for a private pesticide applicator license shall be accompanied by a fee of twenty-five dollars. Individuals with a valid certified applicator license, pest control consultant license, or dealer manager license who qualify in the appropriate state-wide or agricultural license categories are exempt from the private applicator fee requirement. However, licensed public pesticide operators, otherwise exempted from the public pesticide operator license fee requirement, are not also exempted from the private pesticide applicator fee requirement. [1997 c 242 § 14; 1994 c 283 § 12; 1993 sp.s. c 19 § 7; 1992 c 170 § 7; 1991 c 109 § 33; 1989 c 380 § 42; 1979 c 92 § 8.]

Effective date—1997 c 242: See note following RCW 15.58.070.

17.21.128 Renewal of certificate or license—Recertification standards. (1) The director may renew any certification or license issued under authority of this chapter subject to the recertification standards identified in subsection (2) of this section or an examination requiring new knowledge that may be required to apply pesticides.

(2) Except as provided in subsection (3) of this section, all individuals licensed under this chapter shall meet the recertification standards identified in (a) or (b) of this subsection, every five years, in order to qualify for continuing licensure.

(a) Licensed pesticide applicators may qualify for continued licensure through accumulation of recertification credits.

(i) Private pesticide applicators shall accumulate a minimum of twenty department-approved credits every five years with no more than eight credits allowed per year;

(ii) All other license types established under this chapter shall accumulate a minimum of forty department-approved credits every five years with no more than fifteen credits allowed per year.

(b) Certified pesticide applicators may qualify for continued licensure through meeting the examination requirements necessary to become licensed in those areas in which the licensee operates.

(3) At the termination of a licensee's five-year recertification period, the director may waive the requirements identified in subsection (2) of this section if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency approved government agency plan. [1994 c 283 § 13; 1986 c 203 § 9; 1979 c 92 § 9.]

Severability—1986 c 203: See note following RCW 15.17.245.

17.21.129 Demonstration and research license—Requirements. Except as provided in RCW 17.21.203, it is unlawful for a person to use or supervise the use of any experimental use pesticide or any restricted use pesticide on small experimental plots for research purposes when no charge is made for the pesticide and its application without a demonstration and research applicator's license.

(1) Application for a demonstration and research license shall be accompanied by a fee of twenty-five dollars.

(2) Persons licensed in accordance with this section are exempt from the requirements of RCW 17.21.160, 17.21.170, and 17.21.180. [1997 c 242 § 15; 1994 c 283 § 14; 1993 sp.s. c 19 § 8; 1992 c 170 § 8; 1991 c 109 § 34; 1989 c 380 § 43; 1987 c 45 § 30; 1981 c 297 § 26.]

Effective date—1997 c 242: See note following RCW 15.58.070.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

Severability—1981 c 297: See note following RCW 15.36.201.

17.21.130 Revocation, suspension, or denial. Any license, permit, or certification provided for in this chapter may be revoked or suspended, and any license, permit, or certification application may be denied by the director for cause. If the director suspends a license under this chapter with respect to activity of a continuing nature under chapter 34.05 RCW, the director may elect to suspend the license for a subsequent license year during a period that coincides with the period commencing thirty days before and ending thirty days after the date of the incident or incidents giving rise to the violation.

The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58

§ 877; 1994 c 283 § 15; 1989 c 380 § 46; 1986 c 203 § 10; 1961 c 249 § 13.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

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

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

Severability—1986 c 203: See note following RCW 15.17.245.

17.21.132 License, certification—Applications. Any person applying for a license or certification authorized under the provisions of this chapter shall file an application on a form prescribed by the director.

(1) The application shall state the license or certification and the classification(s) for which the applicant is applying and the method in which the pesticides are to be applied.

(2) For all classes of licenses except private applicator, all applicants shall be at least eighteen years of age on the date that the application is made. Applicants for a private pesticide applicator license shall be at least sixteen years of age on the date that the application is made.

(3) Application for a license to apply pesticides shall be accompanied by the required fee. No license may be issued until the required fee has been received by the department.

(4) Each classification of license issued under this chapter shall expire annually on a date set by rule by the director. Renewal applications shall be filed on or before the applicable expiration date. [1997 c 242 § 16; 1994 c 283 § 16; 1991 c 109 § 35; 1989 c 380 § 44.]

17.21.134 Licenses—Examination requirements. (1) The director shall not issue a commercial pesticide applicator license until the applicant, if he or she is the sole owner and manager of the business has passed examinations in all classifications that the business operates. If there is more than one owner or the owner does not participate in the pesticide application activities, the person managing the pesticide application activities of the business shall be licensed in all classifications that the business operates. The director shall not issue a commercial pesticide operator, public operator, private commercial applicator, or demonstration and research applicator license until the applicant has passed an examination demonstrating knowledge of:

(a) How to apply pesticides under the classification for which he or she has applied, manually or with the various apparatuses that he or she may operate;

(b) The nature and effect of pesticides he or she may apply under such classifications; and

(c) Any other matter the director determines to be a necessary subject for examination.

(2) The director shall charge an examination fee established by rule 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.

(3) The director may prescribe separate testing procedures and requirements for each license. [1994 c 283 § 17; 1989 c 380 § 45.]

17.21.140 Renewal—Delinquency. (1) If the application for renewal of any license provided for in this chapter is not filed on or prior to the expiration date of the license as set by rule by the director, a penalty of twenty-five dollars for the commercial pesticide applicator's license, and a penalty equivalent to the license fee for any other license, 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 or she has not acted as a licensee subsequent to the expiration of the license.

(2) Any license for which a timely renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied. [1991 c 109 § 36; 1989 c 380 § 47; 1961 c 249 § 14.]

17.21.150 Violation of chapter—Unlawful acts. A person who has committed any of the following acts is declared to be in 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 pesticides;

(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 including a final order of the director directing payment of a civil penalty. In an adjudicative proceeding arising from the department's denial of a license for failure to pay a civil penalty the subject shall be limited to whether the payment was made and the proceeding may not be used to collaterally attack the final order;

(6) Refused or neglected to keep and maintain the pesticide application records required by rule, or to make reports when and as required;

(7) Made false or fraudulent records, invoices, or reports;

(8) Acted as a certified applicator without having provided direct supervision to an unlicensed person as defined in RCW 17.21.020(12);

(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 or she operates or has operated, regardless of whether or not he or she has previously passed a pesticide license examination;

(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) Knowingly made false, misleading or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land or in connection with any pesticide complaint or investigation;

(14) Impersonated any state, county or city inspector or official;

(15) Applied a restricted use pesticide without having a certified applicator in direct supervision;

(16) Operated a commercial pesticide application business: (a) Without an individual licensed as a commercial pesticide applicator or (b) with a licensed commercial pesticide applicator not licensed in the classification or classifications in which the business operates; or

(17) Operated as a commercial pesticide applicator without meeting the financial responsibility requirements including not having a properly executed financial responsibility insurance certificate or surety bond form on file with the department. [1994 c 283 § 18; 1989 c 380 § 48; 1971 ex.s. c 191 § 4; 1967 c 177 § 8; 1961 c 249 § 15.]

17.21.160 Commercial pesticide applicator license—Financial responsibility. The director shall not issue a commercial pesticide applicator license until the applicant has furnished evidence of financial responsibility.

(1) Evidence of financial responsibility shall consist of either 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. The 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.

(2) Evidence of financial responsibility shall be supplied to the department on a financial responsibility insurance certificate or surety bond form (blank forms supplied by the department to the applicant). [1994 c 283 § 19; 1989 c 380 § 49; 1967 c 177 § 9; 1961 c 249 § 16.]

17.21.170 Commercial pesticide applicator license—Amount of bond or insurance required—Notice of reduction or cancellation by surety or insurer. The following requirements apply to the amount of bond or insurance required for commercial applicators:

(1) The amount of the surety bond or liability insurance, as provided for in RCW 17.21.160, shall be not less than fifty 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. The surety bond or liability insurance shall be maintained at not less than that sum at all times during the licensed period.

(2) The property damage portion of this requirement may be waived by the director if it can be demonstrated by the applicant that all applications performed under this license occur under confined circumstances and on property owned or leased by the applicant.

(3) The director shall be notified ten days before any reduction of insurance coverage at the request of the applicant or cancellation of the surety bond or liability insurance by the surety or insurer and by the insured.

(4) The total and aggregate of the surety and insurer for all claims is limited to the face of the bond or liability insurance policy. 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 thousand dollars for all applicators for the total amount of liability insurance or surety bond required by this section, but if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause shall not be accepted by the director unless the 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. [1994 c 283 § 20; 1983 c 95 § 7; 1967 c 177 § 10; 1963 c 107 § 1; 1961 c 249 § 17.]

17.21.180 Commercial pesticide applicator license—Suspension of license for failure to meet financial responsibility criteria. The commercial pesticide applicator license shall, whenever the licensee's surety bond or insurance policy is reduced below the requirements of RCW 17.21.170 or whenever the commercial applicator has not supplied evidence of financial responsibility, as required by RCW 17.21.160 and 17.21.170, by the expiration date of the previous policy or surety bond, be automatically suspended until such licensee's surety bond or insurance policy again meets the requirements of RCW 17.21.170. In addition, 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 licensee has furnished written proof that he or she is in compliance with the provisions of RCW 17.21.170. [1994 c 283 § 21; 1989 c 380 § 50; 1987 c 45 § 31; 1967 c 177 § 11; 1961 c 249 § 18.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

17.21.187 Limited private applicator—Purpose—Pilot project—Definition—Application. (*Expires December 31, 2002.*) (1) The purpose of this section is to establish a pilot project to evaluate the feasibility of establishing a limited private applicator license to facilitate the control of weeds, especially those defined as noxious weeds, in Washington state.

(2) "Limited private applicator" means a certified applicator who uses or is in direct supervision of the use of any herbicide classified by the EPA or the director as a restricted use pesticide, for the sole purpose of controlling weeds on nonproduction agricultural land owned or rented by the applicator or the applicator's employer. Nonproduction agricultural land includes pastures, range land, fencerows, and areas around farm buildings but not aquatic sites. A limited private applicator also may apply restricted use herbicides to nonproduction agricultural land of another person if applied without compensation other than trading of personal services between the applicator and the other person. A limited private applicator may not apply restricted use herbicides through any equipment defined under this chapter as an apparatus.

(3) A person may participate in the pilot project by applying to be licensed as a limited private applicator in 1998, 1999, or 2000. The application requirements, fee, and

examination requirements for a limited private applicator are the same as for a private applicator.

(4)(a) A limited private applicator is exempt from the credit accumulation requirements of RCW 17.21.128(2)(a), and, upon application, begins a recertification period which ends on December 31, 2002.

(i) Limited private pesticide applicators first applying for a license in 1998 shall accumulate a minimum of ten department-approved credits by the end of the recertification period.

(ii) Limited private pesticide applicators first applying for a license in 1999 shall accumulate a minimum of eight department-approved credits by the end of the recertification period.

(iii) Limited private pesticide applicators first applying for a license in 2000 shall accumulate a minimum of six department-approved credits by the end of the recertification period.

(b) All credits must be applicable to the control of weeds with at least half of the credits directly related to weed control.

(5) Any limited private applicator who successfully completes the recertification requirements of this section is deemed to have met the credit accumulation requirements of RCW 17.21.128(2)(a) for private applicators.

(6) This section applies only to certified applicators in Ferry and Okanogan counties, Washington and expires December 31, 2002. [1997 c 242 § 20.]

17.21.190 Damages due to use or application of pesticide—Report of loss required. Any person suffering property loss or damage resulting from the use or application by others of any pesticide shall file with the director a verified report of loss.

(1) The report shall set forth, so far as known to the claimant, the following:

(a) The name and address of the claimant;

(b) The type, kind, property alleged to be injured or damaged;

(c) The name of the person applying the pesticide and allegedly responsible; and

(d) The name of the owner or occupant of the property for whom such application of the pesticide was made.

(2) The report shall be filed within thirty days from the time that the property loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the report shall be filed prior to harvest of fifty percent of that crop, unless the loss or damage was not then known. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the damage.

(3) Any person filing a report of loss under this section shall cooperate with the department in conducting an investigation of such a report and shall provide the department or authorized representatives of the department access to any affected property and any other necessary information relevant to the report. If a claimant refuses to cooperate with the department, the report shall not be acted on by the department.

(4) The filing of a report or the failure to file 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.

(5) The failure to file a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one suffering loss from such use or application of a pesticide by a pesticide applicator or operator, the director may refuse to act upon the complaint. [1994 c 283 § 22; 1991 c 263 § 1; 1989 c 380 § 51; 1961 c 249 § 19.]

17.21.200 Commercial pesticide applicator license—Exemptions. The provisions of this chapter relating to commercial pesticide applicator licenses and requirements for their issuance shall not apply to:

(1) Any forest landowner, or his or her employees, applying pesticides with ground apparatus or manually, on his or her own lands or any lands or rights of way under his or her control; or

(2) Any farmer owner of ground apparatus applying pesticides for himself or herself or if applied on an occasional basis not amounting to a principal or regular occupation without compensation other than trading of personal services between producers of agricultural commodities on the land of another person; or

(3) Any grounds maintenance person conducting grounds maintenance on an occasional basis not amounting to a regular occupation; or

(4) Persons who apply pesticides as an incidental part of their business, such as dog grooming services or such other businesses as shall be identified by the director.

However, persons exempt under this section shall not use restricted use pesticides and shall not advertise or publicly hold themselves out as pesticide applicators. [1994 c 283 § 23; 1992 c 170 § 9; 1989 c 380 § 52; 1979 c 92 § 3; 1971 ex.s. c 191 § 5; 1967 c 177 § 12; 1961 c 249 § 20.]

17.21.203 Government research personnel—Requirements. 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, however when such persons are applying restricted use pesticides, they shall be licensed as public operators. [1994 c 283 § 24; 1981 c 297 § 23; 1979 c 92 § 4; 1971 ex.s. c 191 § 9.]

Severability—1981 c 297: See note following RCW 15.36.201.

17.21.220 Application of chapter to governmental entities—Public operator license required—Exemption—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.

(2) It shall be unlawful for any employee of a state agency, municipal corporation, public utility, or any other government agency to use or to supervise the use of any restricted use pesticide, or any pesticide by means of an apparatus, without having obtained a public operator license from the director. Application for a public operator license

shall be accompanied by a fee of twenty-five dollars. The fee shall not apply to public operators licensed and working in the health vector field. The public operator license shall be valid only when the operator is acting as an employee of a government agency.

(3) The jurisdictional health officer or his or her duly authorized representative is exempt from this licensing provision when applying pesticides that are not restricted use pesticides to control pests other than weeds.

(4) 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. [1997 c 242 § 17; 1994 c 283 § 25; 1993 sp.s. c 19 § 9; 1991 c 109 § 37; 1989 c 380 § 53; 1986 c 203 § 11; 1981 c 297 § 24; 1971 ex.s. c 191 § 7; 1967 c 177 § 13; 1961 c 249 § 22.]

Effective date—1997 c 242: See note following RCW 15.58.070.

Severability—1986 c 203: See note following RCW 15.17.245.

Severability—1981 c 297: See note following RCW 15.36.201.

17.21.230 Pesticide advisory board. (1) There is hereby created a pesticide advisory board consisting of four licensed pesticide applicators residing in the state (one shall be licensed to operate agricultural ground apparatus, one shall be an urban landscape applicator, 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 pesticide coordinator from Washington State University, one member from the agricultural chemical industry, one member from the food processing industry, one member representing agricultural labor, one health care practitioner in private practice, two members from the environmental community, one producer of aquacultural products, and two producers of agricultural crops or products on which pesticides are applied.

(2) Such members shall be appointed by the director for terms of four years and may be appointed for successive four-year terms at the discretion of the director. The terms shall be staggered so that approximately one-fourth of the terms expire on June 30 of each calendar year. In making appointments, the director shall seek nominations from affected agricultural and environmental groups. The director may remove any member of the pesticide advisory board prior to the expiration of his or her term of appointment for cause. The pesticide advisory board shall also include the following nonvoting members: The director of the department of labor and industries or a duly authorized representative, the environmental health specialist from the department of health, the assistant director of the pesticide management division of the department, and the directors, or their appointed representatives, of the department[s] of fish and wildlife, natural resources, and ecology. [1994 c 283 § 26; 1989 c 380 § 54; 1988 c 36 § 8; 1974 ex.s. c 20 § 1; 1971 ex.s. c 191 § 8; 1967 c 177 § 14; 1961 c 249 § 23.]

17.21.240 Pesticide advisory board—Vacancies. Upon the death, resignation or removal for cause of any member of the pesticide advisory board, the director shall at-

tempt to 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. [1994 c 283 § 27; 1989 c 380 § 55; 1961 c 249 § 24.]

17.21.250 Pesticide advisory board—Duties. The pesticide advisory board shall advise the director on any or all problems relating to the use and application of pesticides in the state. [1989 c 380 § 56; 1961 c 249 § 25.]

17.21.260 Pesticide advisory board—Officers, meetings. The pesticide advisory board shall elect one of its members as chair. The members of the board shall meet at such time and at such place as shall be specified by the call of the director, chair, or a majority of the board. [1994 c 283 § 28; 1989 c 380 § 57; 1961 c 249 § 26.]

17.21.270 Pesticide advisory board—Travel expenses. No person appointed to the pesticide advisory board shall receive a salary or other compensation as a member of the board: PROVIDED, That each member of the board shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day spent in actual attendance at or traveling to and from meetings of the board or special assignments for the board. [1989 c 380 § 58; 1975-'76 2nd ex.s. c 34 § 24; 1961 c 249 § 27.]

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

17.21.280 Disposition of revenue, enforcement of chapter—District court fees, fines, penalties and forfeitures. (1) Except as provided in subsection (2) of this section, all moneys collected under the provisions of this chapter shall be paid to the director and deposited in the agricultural local fund, RCW 43.23.230, for use exclusively in the enforcement of this chapter.

(2) All moneys collected for civil penalties levied under RCW 17.21.315 shall be deposited in the state general fund. All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW. [1997 c 242 § 18; 1994 c 283 § 29; 1989 c 380 § 59; 1987 c 202 § 183; 1969 ex.s. c 199 § 15; 1961 c 249 § 28.]

Intent—1987 c 202: See note following RCW 2.04.190.

17.21.290 Pesticide application apparatuses—License plate as identification. 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 in rule. [1994 c 283 § 30; 1989 c 380 § 60; 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. The provisions of this chapter requiring all structural 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 the city of the first class and the county in which the city is situated, and there exists a joint county-city health department, then the joint county-city health department may enforce the provisions of the city and county as to the license requirements for the structural pest control operators, exterminators and fumigators. [1986 c 203 § 12; 1967 c 177 § 19.]

Severability—1986 c 203: See note following RCW 15.17.245.

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.]

17.21.315 Civil penalty for failure to comply with chapter. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty herein provided. [1989 c 380 § 61; 1985 c 158 § 3.]

17.21.320 Access to public or private premises—Search warrants—Prosecuting attorney's duties—Injunctions. (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, the director 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 with 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. [1989 c 380 § 62; 1971 ex.s. c 191 § 10.]

17.21.340 Violation of chapter—Remedies. (1) A person aggrieved by a violation of this chapter or the rules adopted under this chapter:

(a) May request an inspection of the area in which the violation is believed to have occurred. If there are reasonable grounds to believe that a violation has occurred, the department shall conduct an inspection as soon as practicable. However, the director may refuse to act on a request for inspection concerning only property loss or damage if the person suffering property damage fails to file a timely report of loss under RCW 17.21.190. If an inspection is conducted, the person requesting the inspection shall:

(i) Be promptly notified in writing of the department's decision concerning the assessment of any penalty pursuant to the inspection; and

(ii) Be entitled, on request, to have his or her name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available pursuant to this chapter: PROVIDED, That in any appeal proceeding the identity of the aggrieved person who requests the inspection shall be disclosed to the alleged violator of the act upon request of the alleged violator;

(b) Shall be notified promptly, on written application to the director, of any penalty or other action taken by the department pursuant to an investigation of the violation under this chapter; and

(c) May request, within ten days from the service of a final order fixing a penalty for the violation, that the director reconsider the entire matter if it is alleged that the penalty is inappropriate. If the person is aggrieved by a decision of the director on reconsideration, the person may request an adjudicative proceeding under chapter 34.05 RCW. However, the procedures for a brief adjudicative proceeding may not be used unless agreed to by the person requesting the adjudicative proceeding. During the adjudicative proceeding under (c) of this subsection, the presiding officer shall consider the interests of the person requesting the adjudicative proceeding.

(2) Nothing in this chapter shall preclude any person aggrieved by a violation of this chapter from bringing suit in a court of competent jurisdiction for damages arising from the violation. [1989 c 380 § 63.]

17.21.350 Report to legislature. By February 1st of each year the department shall report to the appropriate committees of the house of representatives and the senate on the activities of the department under this chapter. The report shall include, at a minimum: (1) A review of the department's pesticide incident investigation and enforcement

activities, with the number of cases investigated and the number and amount of civil penalties assessed; and (2) a summary of the pesticide residue food monitoring program with information on the food samples tested and results of the tests, a listing of the pesticides for which testing is done, and other pertinent information. [1997 c 242 § 19; 1989 c 380 § 64.]

17.21.400 Landscape or right of way applications—Notice. (1)(a) A certified applicator making a landscape application shall display the name and telephone number of the applicator or the applicator's employer on any power application apparatus. The applicator shall also carry the material safety data sheet for each pesticide being applied.

(b) A certified applicator making a right of way application shall display the name and telephone number of the applicator or the applicator's employer and the words "VEGETATION MANAGEMENT APPLICATION" on any power application apparatus. The applicator shall also carry the material safety data sheet for each pesticide being applied.

(2) If a certified applicator receives a written request for information on a landscape or right of way spray application, the applicator shall provide the requestor with the name or names of each pesticide applied and (a) a copy of the material safety data sheet for each pesticide; or (b) a pesticide fact sheet for each pesticide as developed or approved by the department.

(3) The director shall adopt rules establishing the size and lettering requirements of the apparatus display signs required under this section. [1994 c 283 § 32; 1992 c 176 § 2.]

17.21.410 Landscape applications—Marking of property, posting requirements. (1) A certified applicator making a landscape application to:

(a) Residential property shall at the time of the application place a marker at the usual point of entry to the property. If the application is made to an isolated spot that is not a substantial portion of the property, the applicator shall only be required to place a marker at the application site. If the application is in a fenced or otherwise isolated backyard, no marker is required.

(b) Commercial properties such as apartments or shopping centers shall at the time of application place a marker in a conspicuous location at or near each site being treated.

(c) A golf course shall at the time of the application place a marker at the first tee and tenth tee or post the information in a conspicuous location such as on a central message board.

(d) A school, nursery school, or licensed day care shall at the time of the application place a marker at each primary point of entry to the school grounds.

(e) A park, cemetery, rest stop, or similar property as may be defined in rule shall at the time of the application place a marker at each primary point of entry.

(2) An individual making a landscape application to a school grounds, nursery school, or licensed day care, and not otherwise covered by subsection (1) of this section, shall be

required to comply with the posting requirements in subsection (1)(d) of this section.

(3) The marker shall be a minimum of four inches by five inches. It shall have the words: "THIS LANDSCAPE HAS BEEN TREATED BY" as the headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. Larger size requirements for markers may be established in rule for specific applications. The company name and service mark with the applicator's telephone number where information can be obtained shall be included between the headline and the footer on the marker. The letters and service marks shall be printed in colors contrasting to the background.

(4) The property owner or tenant shall remove the marker according to the schedule established in rule. A commercial applicator is not liable for the removal of markers by unauthorized persons or removal outside the designated removal time.

(5) A certified applicator who complies with this section cannot be held liable for personal property damage or bodily injury resulting from markers that are placed as required. [1994 c 283 § 33; 1992 c 176 § 5.]

17.21.420 Pesticide-sensitive individuals—List procedure. (1) The department shall develop a list of pesticide-sensitive individuals. The list shall include any person with a documented pesticide sensitivity who submits information to the department on an application form developed by the department indicating the person's pesticide sensitivity.

(2) An applicant for inclusion on the pesticide-sensitive list may apply to the department at any time and shall provide the department, on the department's form, the name, street address, and telephone number of the applicant and of each property owner with property abutting the applicant's principal place of residence. The pesticide sensitivity of an individual shall be certified by a physician who holds a valid license to practice medicine in this state. The lands listed on an application for inclusion on the pesticide-sensitive list shall constitute the pesticide notification area for that applicant. For highway or road rights of way, a property abutting shall mean that portion of the property within one-half mile of the principal place of residence.

(3) A person whose name has been included on the pesticide-sensitive list shall notify the department of a need to update the list as soon as possible after: (a) A change of address or telephone number; (b) a change in ownership of property abutting a pesticide-sensitive individual; (c) a change in the applicant's condition; or (d) the sensitivity is deemed to no longer exist.

(4) The pesticide-sensitive list shall expire on December 31 of each year. The department shall distribute application forms for the new list at a reasonable time prior to the expiration of the current list, including mailing an application form to each person on the current list at the address given by the person in his or her most recent application. Persons desiring to be placed on or remain on the list shall submit a new application each year.

(5) The department shall distribute the list by January 1 and June 15 of each year to all certified applicators likely to make landscape applications. The list shall provide multiple

methods of accessing the information so that certified applicators making landscape applications or right of way applications are able to easily determine what properties and individuals require notification for a specific application. An updated list shall be distributed whenever deemed necessary by the department. Certified applicators may request a list of newly registered individuals that have been added to the list since the last distribution. Registered individuals shall receive verification that their name has been placed on the list. [1994 c 283 § 34; 1992 c 176 § 3.]

17.21.430 Pesticide-sensitive individuals—Notification. (1) A certified applicator making a landscape application or a right of way application to the pesticide notification area, as defined in RCW 17.21.420(2), of a person on the pesticide-sensitive list shall notify the listed pesticide-sensitive individual of the application. Notification shall be made at least two hours prior to the scheduled application, or in the case of an immediate service call, the applicator shall provide notification at the time of the application.

(2) Notification under this section shall be made in writing, in person, or by telephone, and shall disclose the date and approximate time of the application. In the event a certified applicator is unable to provide prior notification because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence of the individual listed on the pesticide-sensitive list at the time of the application. If a person on the pesticide-sensitive list lives in a multifamily dwelling such as an apartment or condominium, the applicator shall notify the person on the list or shall advise the manager or other property owner's representative to notify the person on the list of the application. [1992 c 176 § 4.]

17.21.440 Agricultural workers and handlers of agricultural pesticides—Coordination of regulation and enforcement with department of labor and industries. (1) As used in this section, "federal worker protection standard" or "federal standard" means the worker protection standard for agricultural workers and handlers of agricultural pesticides adopted by the United States environmental protection agency in 40 C.F.R., part 170 as it exists on June 6, 1996.

(2)(a) No rule adopted under this chapter may impose requirements that make compliance with the federal worker protection standard impossible.

(b) The department shall adopt by rule safety and health standards that are at least as effective as the federal standard. Standards adopted by the department under this section shall be adopted in coordination with the department of labor and industries.

(3) If a violation of the federal worker protection standard, or of state rules regulating activities governed by the federal standard, is investigated by the department and by the department of labor and industries, the agencies shall conduct a joint investigation if feasible, and shall share relevant information. However, an investigation conducted by the department of labor and industries under Title 51 RCW solely with regard to industrial insurance shall not be considered to be an investigation by the department of labor

and industries for this purpose. The agencies shall not issue duplicate citations to an individual or business for the same violation of the federal standard or state rules regulating activities governed by the federal standard. By December 1, 1996, the department and the department of labor and industries shall jointly establish a formal agreement that: Identifies the roles of each of the two agencies in conducting investigations of activities governed by the federal standard; and provides for protection of workers and enforcement of standards that is at least [as] effective as provided for other enforcement under this chapter. [1996 c 260 § 3.]

Finding—Intent—Severability—1996 c 260: See notes following RCW 49.17.280.

Department of labor and industries authority: RCW 49.17.280.

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.]

17.21.920 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.]

17.21.932 Severability—1979 c 92. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 92 § 10.]

17.21.933 Severability—1989 c 380. See RCW 15.58.942.

Chapter 17.24

INSECT PESTS AND PLANT DISEASES

Sections

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17.24.900	Captions not law—1991 c 257.

Horticultural pests and diseases: Chapter 15.08 RCW.

17.24.003 Purpose. The purpose of this chapter is to provide a strong system for the exclusion of plant and bee pests and diseases through regulation of movement and quarantines of infested areas to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state; plants and shrubs within the state; and the environment of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and the public and private costs that result when these infestations become established. [1991 c 257 § 3.]

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

(1) "Department" means the state department of agriculture.

(2) "Director" means the director of the state department of agriculture or the director's designee.

(3) "Quarantine" means a rule issued by the department that prohibits or regulates the movement of articles, bees, plants, or plant products from designated quarantine areas within or outside the state to prevent the spread of disease, plant pathogens, or pests to nonquarantine areas.

(4) "Plant pest" means a living stage of an insect, mite, nematode, slug, snail, or protozoa, or other invertebrate animal, bacteria, fungus, or parasitic plant, or their reproductive parts, or viruses, or an organism similar to or allied with any of the foregoing plant pests, including a genetically engineered organism, or an infectious substance that can directly or indirectly injure or cause disease or damage in plants or parts of plants or in processed, manufactured, or other products of plants.

(5) "Plants and plant products" means trees, shrubs, vines, forage, and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from the plants and plant products.

(6) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or a form of inspection and certification document that accompanies the movement of inspected and certified plant materi-

al and plant products, or bees, bee hives, or beekeeping equipment.

(7) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, plant products, or bees, bee hives, or beekeeping equipment regulated under this chapter, in which the person agrees to comply with stipulated requirements.

(8) "Distribution" means the movement of a regulated article from the property where it is grown or kept, to property that is not contiguous to the property, regardless of the ownership of the properties.

(9) "Genetically engineered organism" means an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant DNA techniques, excluding those organisms covered by the food, drug and cosmetic act (21 U.S.C. Secs. 301-392).

(10) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee of any of these entities.

(11) "Sell" means to sell, to hold for sale, offer for sale, handle, or to use as inducement for the sale of another article or product.

(12) "Noxious weed" means a living stage, including, but not limited to, seeds and reproductive parts, of a parasitic or other plant of a kind that presents a threat to Washington agriculture or environment.

(13) "Regulated article" means a plant or plant product, bees or beekeeping equipment, noxious weed or other articles or equipment capable of harboring or transporting plant or bee pests or noxious weeds that is specifically addressed in rules or quarantines adopted under this chapter.

(14) "Owner" means the person having legal ownership, possession, or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, or their agent.

(15) "Nuisance" means a plant, or plant part, apiary, or property found in a commercial area on which is found a pest, pathogen, or disease that is a source of infestation to other properties.

(16) "Bees" means honey producing insects of the species *apis mellifera* and includes the adults, eggs, larvae, pupae, and other immature stages of *apis mellifera*.

(17) "Bee pests" means a mite, other parasite, or disease that causes injury to bees.

(18) "Biological control" means the use by humans of living organisms to control or suppress undesirable animals and plants; the action of parasites, predators, or pathogens on a host or prey population to produce a lower general equilibrium than would prevail in the absence of these agents.

(19) "Biological control agent" means a parasite, predator, or pathogen intentionally released, by humans, into a target host or prey population with the intent of causing population reduction of that host or prey.

(20) "Emergency" means a situation where there is an imminent danger of an infestation of plant pests or disease that seriously threatens the state's agricultural or horticultural industries or environment and that cannot be adequately addressed with normal procedures or existing resources. [1991 c 257 § 4.]

17.24.011 Regulation of plant, plant product, bee movement, and genetically engineered organisms. Notwithstanding the provisions of RCW 17.24.041, the director may:

(1) Make rules under which plants, plant products, bees, hives and beekeeping equipment, and noxious weeds may be brought into this state from other states, territories, or foreign countries; and

(2) Make rules with reference to plants, plant products, bees, bee hives and equipment, and genetically engineered organisms while in transit through this state as may be deemed necessary to prevent the introduction into and dissemination within this state of plant and bee pests and noxious weeds. [1991 c 257 § 5.]

17.24.021 Inspection and investigation. (1) The director may intercept and hold or order held for inspection, or cause to be inspected while in transit or after arrival at their destination, all plants, plant products, bees, or other articles likely to carry plant pests, bee pests, or noxious weeds being moved into this state from another state, territory, or a foreign country or within or through this state for plant and bee pests and disease.

(2) The director may enter upon public and private premises at reasonable times for the purpose of carrying out this chapter. If the director be denied access, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises. The court may upon such application issue the search warrant for the purposes requested.

(3) The director may adopt rules in accordance with chapter 34.05 RCW as may be necessary to carry out the purposes and provisions of this chapter. [1991 c 257 § 6.]

17.24.031 Determination of origin. The director may demand of a person who has in his or her possession or under his or her control, plants, bees, plant products, or other articles that may carry plant pests, bee pests, or noxious weeds, full information as to the origin and source of these items. Failure to provide that information, if known, may subject the person to a civil penalty. [1991 c 257 § 7.]

17.24.041 Power to adopt quarantine measures—Rules. If determined to be necessary to protect the forest, agricultural, horticultural, floricultural, beekeeping, or environmental interests of this state, the director may declare a quarantine against an area, place, nursery, orchard, vineyard, apiary, or other agricultural establishment, county or counties within the state, or against other states, territories, or foreign countries, or a portion of these areas, in reference to plant pests, or bee pests, or noxious weeds, or genetically engineered plant or plant pest organisms. The director may prohibit the movement of all regulated articles from such quarantined places or areas that are likely to contain such plant pests or noxious weeds or genetically engineered plant, plant pest, or bee pest organisms. The quarantine may be made absolute or rules may be adopted prescribing the conditions under which the regulated articles may be moved into, or sold, or otherwise disposed of in the state. [1991 c 257 § 8.]

17.24.051 Introduction of plant pests, noxious weeds, or organisms affecting plant life. The introduction into or release within the state of a plant pest, noxious weeds, bee pest, or any other organism that may directly or indirectly affect the plant life of the state as an injurious pest, parasite, predator, or other organism is prohibited, except under special permit issued by the department under rules adopted by the director. A special permit is not required for the introduction or release within the state of a genetically engineered plant or plant pest organism if the introduction or release has been approved under provisions of federal law and the department has been notified of the planned introduction or release. The department shall be the sole issuing agency for the permits. Except for research projects approved by the department, no permit for a biological control agent shall be issued unless the department has determined that the parasite, predator, or plant pathogen is target organism or plant specific and not likely to become a pest of nontarget plants or other beneficial organisms. The director may also exclude biological control agents that are infested with parasites determined to be detrimental to the biological control efforts of the state. The department may rely upon findings of the United States department of agriculture or any experts that the director may deem appropriate in making a determination about the threat posed by such organisms. In addition, the director may request confidential business information subject to the conditions in RCW 17.24.061.

Plant pests, noxious weeds, or other organisms introduced into or released within this state in violation of this section shall be subject to detention and disposition as otherwise provided in this chapter. [1991 c 257 § 9.]

17.24.061 Protection of privileged or confidential information—Procedure—Notice—Declaratory judgment.

(1) In submitting data required by this chapter, the applicant may: (a) Mark clearly portions of data which in his or her opinion are trade secrets or commercial or financial information; and (b) submit the marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make information submitted by an applicant or registrant under this chapter available to the public if, in the judgment of the director, the information is privileged or confidential because it contains or relates to trade secrets or commercial or financial information. Where necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director.

(3) If the director proposes to release for inspection or to reveal at a public hearing or in findings of fact issued by the director, information that the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, he or she shall notify the applicant or registrant in writing, by certified mail. The director may not make this data available for inspection nor reveal the information at a public hearing or in findings of fact issued by the director until thirty days after receipt of the notice by

the applicant or registrant. During this period, the applicant or registrant may withdraw the application or may institute an action in the superior court of Thurston county for a declaratory judgment as to whether the information is subject to protection under subsection (2) of this section. [1991 c 257 § 10.]

17.24.071 Compliance agreements. The director may enter into compliance agreements with a person engaged in growing, handling, or moving articles, bees, plants, or plant products regulated under this chapter. [1991 c 257 § 11.]

17.24.081 Prohibited acts. It shall be unlawful for a person to:

(1) Sell, offer for sale, or distribute a noxious weed or a plant or plant product or regulated article infested or infected with a plant pest declared by rule to be a threat to the state's forest, agricultural, horticultural, floricultural, or beekeeping industries or environment;

(2) Knowingly receive a noxious weed, or a plant, plant product, bees, bee hive or appliances, or regulated article sold, given away, carried, shipped, or delivered for carriage or shipment within this state, in violation of the provisions of this chapter or the rules adopted under this chapter;

(3) Fail to immediately notify the department and isolate and hold the noxious weed, bees, bee hives or appliances, plants or plant products, or other thing unopened or unused subject to inspection or other disposition as may be provided by the department, where the item has been received without knowledge of the violation and the receiver has become subsequently aware of the potential problem;

(4) Knowingly conceal or willfully withhold available information regarding an infected or infested plant, plant product, regulated article, or noxious weed;

(5) Introduce or move into this state, or to move or dispose of in this state, a plant, plant product, or other item included in a quarantine, except under rules as may be prescribed by the department, after a quarantine order has been adopted under this chapter against a place, nursery, orchard, vineyard, apiary, other agricultural establishment, county of this state, another state, territory, or a foreign country as to a plant pest, bee pest, or noxious weed or genetically engineered plant or plant pest organism, until such quarantine is removed. [1991 c 257 § 12.]

17.24.091 Impound and disposition. (1) If upon inspection, the director finds that an inspected plant or plant product or bees are infected or infested or that a regulated article is being held or transported in violation of a rule or quarantine of the department, the director shall notify the owner that a violation of this chapter exists. The director may impound or order the impounding of the infected or infested or regulated article in such a manner as may be necessary to prevent the threat of infestation. The notice shall be in writing and sent by certified mail or personal service identifying the impounded article and giving notice that the articles will be treated, returned to the shipper or to a quarantined area, or destroyed in a manner as to prevent infestation. The impounded article shall not be destroyed unless the director determines that (a) no effective treatment can be carried out; and (b) the impounded article cannot be

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returned to the shipper or shipped back to a quarantine area without threat of infestation to this state; and (c) mere possession by the owner constitutes an emergency.

(2) Before taking action to treat, return, or destroy the impounded article, the director shall notify the owner of the owner's right to a hearing before the director under chapter 34.05 RCW. Within ten days after the notice has been given the owner may request a hearing. The request must be in writing.

(3) The cost to impound articles along with the cost, if any, to treat, return, or destroy the articles shall be at the owner's expense. The owner is not entitled to compensation for infested or infected articles destroyed by the department under this section. [1991 c 257 § 13.]

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 chapter 17.24 RCW, as now or hereafter amended, shall be guilty of a misdemeanor, and for a second and each subsequent violation or failure to comply with the provisions of this chapter or rule or regulation adopted hereunder, shall be guilty of a gross misdemeanor. [1981 c 296 § 26; 1927 c 292 § 7; RRS § 2786. Prior: 1921 c 105 § 7.]

Severability—1981 c 296: See note following RCW 15.08.010.

17.24.101 State-wide survey and control activity. If there is reason to believe that a plant or bee pest may adversely impact the forestry, agricultural, horticultural, floricultural, or related industries of the state; or may cause harm to the environment of the state; or such information is needed to facilitate or allow the movement of forestry, agricultural, horticultural, or related products to out-of-state, foreign and domestic markets, the director may conduct, or cause to be conducted, surveys to determine the presence, absence, or distribution of a pest.

The director may take such measures as may be required to control or eradicate such pests where such measures are determined to be in the public interest, are technically feasible, and for which funds are appropriated or provided through cooperative agreements. [1991 c 257 § 14.]

17.24.111 Director's cooperation with other agencies. The director may enter into cooperative arrangements with a person, municipality, county, Washington State University or any of its experiment stations, or other agencies of this state, and with boards, officers, and authorities of other states and the United States, including the United States department of agriculture, for the inspection of bees, plants and plant parts and products and the control or eradication of plant pests, bee pests, or noxious weeds and to carry out other provisions of this chapter. [1991 c 257 § 15.]

17.24.121 Acquisition of lands, water supply, or other properties for quarantine locations. The director may acquire, in fee or in trust, by gift, or whenever funds are appropriated for such purposes, by purchase, easement,

lease, or condemnation, lands or other property, water supplies, as may be deemed necessary for use by the department for establishing quarantine stations for the purpose of the isolation, prevention, eradication, elimination, and control of insect pests or plant pathogens that affect the agricultural or horticultural products of the state; for the propagation of biological control agents; or the isolation of genetically engineered plants or plant pests; or the isolation of bee pests. [1991 c 257 § 16.]

17.24.131 Requested inspections—Fee for service—Disbursements in lieu of fee. To facilitate the movement or sale of forest, agricultural, floricultural, horticultural and related products, or bees and related products, the director may provide, if requested by farmers, growers, or other interested persons, special inspections, pest identifications, plant identifications, plant diagnostic services, pest control activities, other special certifications and activities not otherwise authorized by statute and prescribe a fee for that service. The fee shall, as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved. Moneys collected shall be deposited in the plant pest account, which is hereby created within the agricultural local fund. No appropriation is required for disbursement from the plant pest account to provide the services authorized by this section. In lieu of a fee, assessments and other funds deposited in the plant pest account may be disbursed to provide the services authorized by this section. [1997 c 227 § 2; 1991 c 257 § 17.]

Effective date—1997 c 227: See note following RCW 15.17.243.

17.24.141 Penalties—Criminal and civil penalty. Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to RCW 17.24.100, the director may impose upon and collect from the violator a civil penalty not exceeding five thousand dollars per violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of commission or omission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty. [1991 c 257 § 18.]

17.24.151 Violations—Costs of control. A person who, through a knowing and willful violation of a quarantine established under this chapter, causes an infestation to become established, may be required to pay the costs of public control or eradication measures caused as a result of that violation. [1991 c 257 § 19.]

17.24.161 Funds for technical and scientific services. The director may, at the director's discretion, provide funds for technical or scientific services, labor, materials and supplies, and biological control agents for the control of plant pests, bee pests, and noxious weeds. [1991 c 257 § 20.]

17.24.171 Determination of imminent danger of infestation of plant pests or plant diseases—Emergency measures—Conditions—Procedures. (1) If the director

determines that there exists an imminent danger of an infestation of plant pests or plant diseases that seriously endangers the agricultural or horticultural industries of the state, or that seriously threatens life, health, or economic well-being, the director shall request the governor to order emergency measures to control the pests or plant diseases under *RCW 43.06.010(14). The director's findings shall contain an evaluation of the affect of the emergency measures on public health.

(2) If an emergency is declared pursuant to *RCW 43.06.010(14), the director may appoint a committee to advise the governor through the director and to review emergency measures necessary under the authority of *RCW 43.06.010(14) and this section and make subsequent recommendations to the governor. The committee shall include representatives of the agricultural industries, state and local government, public health interests, technical service providers, and environmental organizations.

(3) Upon the order of the governor of the use of emergency measures, the director is authorized to implement the emergency measures to prevent, control, or eradicate plant pests or plant diseases that are the subject of the emergency order. Such measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

(4) Upon the order of the governor of the use of emergency measures, the director is authorized to enter into agreements with individuals or companies, or both, to accomplish the prevention, control, or eradication of plant pests or plant diseases, notwithstanding the provisions of chapter 15.58 or 17.21 RCW, or any other statute.

(5) The director shall continually evaluate the emergency measures taken and report to the governor at intervals of not less than ten days. The director shall immediately advise the governor if he or she finds that the emergency no longer exists or if certain emergency measures should be discontinued. [1991 c 257 § 21.]

*Reviser's note: RCW 43.06.010 was amended by 1993 c 142 § 5, changing subsection (14) to subsection (13).

17.24.210 Indemnity contracts for damages resulting from prevention, control, or eradication measures—Authorized—Conditions. The director of agriculture may, on the behalf of the state of Washington, enter into indemnity contracts wherein the state of Washington agrees to repay any person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide plant pest or plant disease prevention, control, or eradication measures as provided in this chapter or any rule adopted pursuant to the provisions of this chapter, for losses and damages incurred as a result of such prevention, control, or eradication measures if all of the following conditions occur:

(1) At the time of the incident the worker is performing services as an emergency measures worker and is acting within the course of his duties as an emergency measures worker;

(2) At the time of the injury, loss, or damage, the organization providing emergency measures by which the worker is employed is an approved organization for providing emergency measures;

(3) The injury, loss, or damage is proximately caused by his service either with or without negligence as an emergency measures worker;

(4) The injury, loss, or damage is not caused by the intoxication of the worker; and

(5) The injury, loss, or damage is not due to wilful misconduct or gross negligence on the part of a worker.

Where an act or omission by an emergency services provider in the course of providing emergency services injures a person or property, the provider and the state may be jointly and severally liable for the injury, if state liability is proved under existing or hereafter enacted law.

Each person, firm, corporation, or other entity authorized to provide the prevention, control, or eradication measures implementing a program approved under *RCW 17.24.200 shall be identified on a list approved by the director. For the purposes of this section, each person on the list shall be known, for the duration of the person's services under the program, as "an emergency measures worker." [1982 c 153 § 3.]

*Reviser's note: RCW 17.24.200 was repealed by 1991 c 257 § 23.

Severability—1982 c 153: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 153 § 5.]

Effective date—1982 c 153: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1982." [1982 c 153 § 7.]

17.24.900 Captions not law—1991 c 257. Captions as used in RCW 17.24.005 through 17.24.171 constitute no part of the law. [1991 c 257 § 24.]

Chapter 17.26

CONTROL OF SPARTINA AND PURPLE LOOSESTRIFE

Sections

17.26.005	Findings.
17.26.006	Findings—Purpose.
17.26.007	Findings—Application to appropriations.
17.26.010	Restriction on state agencies and local governments.
17.26.011	Spartina removal includes restoration—Study.
17.26.015	Lead agency—Responsibilities.
17.26.020	High priority for all state agencies—Definitions.
17.26.900	Severability—1995 c 255.
17.26.901	Effective date—1995 c 255.

17.26.005 Findings. The legislature finds that:

(1) *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens* which are collectively called spartina are not native to the state of Washington nor to the west coast of North America. This noxious weed was inadvertently introduced into the wetlands of the state and is now aggressively invading new areas to the detriment of native ecosystems and aquatic habitat. The spread of spartina threatens to permanently convert and displace native freshwater and saltwater wetlands and intertidal zones, including critical habitat for migratory birds, many fish species, bivalves, invertebrates, marine mammals, and other animals. The continued spread of spartina will permanently

reduce the diversity and the quantity of these species and will have a significant negative environmental impact.

Spartina poses a significant hydrological threat. Clumps and meadows of spartina are dense environments that bind sediments and lift the intertidal gradient up out of the intertidal zone through time. This process reduces flows during flood conditions, raises flood levels, and significantly alters the hydrological regime of estuarine areas.

Spartina spreads by rhizomes and seed production. Through lateral growth by rhizomes, spartina establishes a dense monotypic meadow. Through seed production and the spread of seed through the air and by water, spartina is currently being spread to other states and to Canadian provinces.

(2) Purple loosestrife was first documented in the state in 1929 along freshwater shorelands. It is now present throughout the state and is particularly abundant in Grant county and its neighboring counties. The plant appears to be colonizing more rapidly on the eastern side of the state than on the western side. It was first introduced to the Winchester wasteway area in the 1960's and has invaded the area rapidly. Purple loosestrife is displacing native plants and as a result is threatening an extremely important part of this state's wildlife habitat. *Lythrum salicaria* and *L. virgatum* are closely related loosestrife species that are morphologically similar and not easily distinguished from each other in the field. Both species have been referred to as purple loosestrife.

(3) Current laws and rules designed to protect the environment and preserve the wetland habitats, fish, and wildlife of the state are not designed to respond to an ecosystem-wide threat of this kind. State and federal agencies, local governments, weed boards, concerned individuals, and property owners attempting to deal with the ecological emergency posed by spartina and purple loosestrife infestations have been frustrated by interagency disagreements, demands for an undue amount of procedural and scientific process and information, dilatory appeals, and the improper application of laws and regulations by agencies that have in fact undermined the legislative purposes of those same laws while ignoring the long-term implications of delay and inaction. There is a compelling need for strong leadership, coordination, and reporting by a single state agency to respond appropriately to this urgent environmental challenge.

Any further delay of control efforts will significantly increase the cost of spartina and purple loosestrife control and reduce the likelihood of long-term success. Control efforts must be coordinated across political and ownership boundaries in order to be effective.

(4) The presence of noxious weeds on public lands constitutes a public nuisance and negatively impacts public and private lands. The legislature finds that control and eradication of noxious weeds on private lands is in the public interest. [1995 c 255 § 1.]

17.26.006 Findings—Purpose. This state is facing an environmental disaster that will affect other states as well as other nations. The legislature finds that six years is sufficient time for state agencies to debate solutions to the spartina and purple loosestrife problems that are occurring in state waters. One of the purposes of chapter 255, Laws of

1995 is to focus agency action on control and future eradication of spartina and purple loosestrife. It is the mandate of the legislature that one state agency, the department of agriculture, be responsible for a unified effort to eliminate spartina and control purple loosestrife, with the advice of the state noxious weed control board, and that state agency shall be directly accountable to the legislature on the progress of the spartina eradication and purple loosestrife control program. [1995 c 255 § 2.]

17.26.007 Findings—Application to appropriations.

This section applies to appropriations made to the department of agriculture specifically for the removal or control of spartina or purple loosestrife or both plants. The legislature finds that: The presence of spartina or purple loosestrife on private lands threatens wildlife habitat and provides a source of renewed infestation for public lands; and effective eradication or control of spartina or purple loosestrife requires concerted efforts on both public and private lands to protect public resources. The department of agriculture may grant funds to other state agencies, local governments, and nonprofit corporations for eradication or control purposes and may use those moneys itself. The department of agriculture may match private funds for eradication or control programs on private property on a fifty-fifty matching basis. The accounting and supervision of the funds at the local level shall be conducted by the department of agriculture. [1995 c 255 § 11.]

17.26.010 Restriction on state agencies and local governments. State agencies and local governments may not use any other local, state, or federal permitting requirement, regulatory authority, or legal mechanism to override the legislative intent and statutory mandates of chapter 255, Laws of 1995. [1995 c 255 § 8.]

17.26.011 Spartina removal includes restoration—Study. Spartina removal shall include restoration to return intertidal land and other infested lands to the condition found on adjacent unaffected lands in the same tidal elevation. The department of fish and wildlife, the department of ecology, the department of agriculture, and the department of natural resources shall develop a restoration plan in cooperation with owners of spartina infested lands and shall submit the plan to the appropriate standing committees of the house of representatives and the senate by December 31, 1995. [1995 c 255 § 9.]

17.26.015 Lead agency—Responsibilities. (1) The state department of agriculture is the lead agency for the control of spartina and purple loosestrife with the advice of the state noxious weed control board.

(2) Responsibilities of the lead agency include:

(a) Coordination of the control program including memorandums of understanding, contracts, and agreements with local, state, federal, and tribal governmental entities and private parties;

(b) Preparation of a state-wide spartina management plan utilizing integrated vegetation management strategies that encompass all of Washington's tidelands. The plan shall be developed in cooperation with local, state, federal, and

tribal governments, private landowners, and concerned citizens. The plan shall prioritize areas for control. Nothing in this subsection prohibits the department from taking action to control spartina in a particular area of the state in accordance with a plan previously prepared by the state while preparing the state-wide plan;

(c) Directing on the ground control efforts that include, but are not limited to: (i) Control work and contracts; (ii) spartina survey; (iii) collection and maintenance of spartina location data; (iv) purchasing equipment, goods, and services; (v) survey of threatened and endangered species; and (vi) site-specific environmental information and documents; and (d) Evaluating the effectiveness of the control efforts.

The lead agency shall report to the appropriate standing committees of the house of representatives and the senate no later than December 15th of each year through the year 1999 on the progress of the program, the number of acres treated by various methods of control, and on the funds spent. [1998 c 245 § 4; 1995 c 255 § 10.]

17.26.020 High priority for all state agencies—Definitions. (1) Facilitating the control of spartina and purple loosestrife is a high priority for all state agencies.

(2) The department of natural resources is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of natural resources.

(3) The department of fish and wildlife is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of fish and wildlife.

(4) The state parks and recreation commission is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the state parks and recreation commission.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this chapter, RCW 90.48.020, 90.58.030, and 75.20.108:

(a) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens*.

(b) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum*.

(c) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080. [1995 c 255 § 12.]

17.26.900 Severability—1995 c 255. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 255 § 14.]

17.26.901 Effective date—1995 c 255. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]. [1995 c 255 § 15.]

Chapter 17.28

MOSQUITO CONTROL DISTRICTS

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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 up to 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 CENTS PER
THOUSAND DOLLARS OF ASSESSED VALUE LEVY

"Shall the mosquito control district, if formed, levy a general tax of . . . 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. [1982 c 217 § 1; 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 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. [1981 c 156 § 1; 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.]

17.28.175 Control of mosquitos—Declaration that owner is responsible. A board established pursuant to RCW 17.28.110 may adopt, by resolution, a policy declaring that the control of mosquitos within the district is the responsibility of the owner of the land from which the mosquitos originate. To protect the public health or welfare, the board may, in accordance with policies and standards established by the board following a public hearing, adopt a regulation requiring owners of land within the district to perform such acts as may be necessary to control mosquitos. [1990 c 300 § 2.]

17.28.185 Control of mosquitos—Noncompliance by landowner with regulations. (1) Whenever the board finds that the owner has not taken prompt and sufficient action to comply with regulations adopted pursuant to RCW 17.28.175 to control mosquitos originating from the owner's land, the board shall notify the owner that a violation of this chapter exists. The notice shall be in writing and sent by certified mail, or served by personal service. The notice shall provide a reasonable time period for action to be taken to control mosquitos. If the board deems that a public nuisance or threat to public health or welfare caused by the mosquito infestation is sufficiently severe, it may require immediate control action to be taken within forty-eight hours following the time that notification is reasonably expected to have been

received by the owner or agent by certified mail or personal service.

(2) If the owner does not take sufficient action to control mosquitos in accordance with the notice, the board may 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 expenses, 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. Necessary costs and expenses, including reasonable attorneys' fees, incurred by the board in carrying out this section, may be recovered at the same time, as a part of the action filed under this section. The venue in proceedings for reimbursement of expenses brought pursuant to this section, including those involving governmental entities, shall be the county in which the real property that is the subject of the action is situated. [1990 c 300 § 3.]

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 depository 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—Excess property tax levies. 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 authorized capital purposes of the mosquito control district, and to provide for the retirement thereof by excess property tax levies whenever a proposition authorizing both

the issuance of such bonds and the imposition of such excess levies has been approved by the voters of the district, at an election held pursuant to RCW 39.36.050, 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. Mosquito control districts may become indebted for capital purposes up to an amount equal to one and one-fourth percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015.

Such bonds shall never be issued to run for a longer period than ten years from the date of issue and shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 5; 1983 c 167 § 18; 1973 1st ex.s. c 195 § 4; 1970 ex.s. c 56 § 5; 1969 ex.s. c 232 § 65; 1957 c 153 § 26.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

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

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

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

17.34.010	Compact provisions.
17.34.020	Cooperation with insurance fund authorized.
17.34.030	Filing of bylaws and amendments.
17.34.040	Compact administrator.
17.34.050	Requests or applications for assistance from insurance fund.
17.34.060	Agency incurring expenses to be credited with payments to this state.
17.34.070	"Executive head" defined.

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.
- 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 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.

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.]